LITTLETONS TENVRES IN ENGLISH,

Lately peruſed and amended.

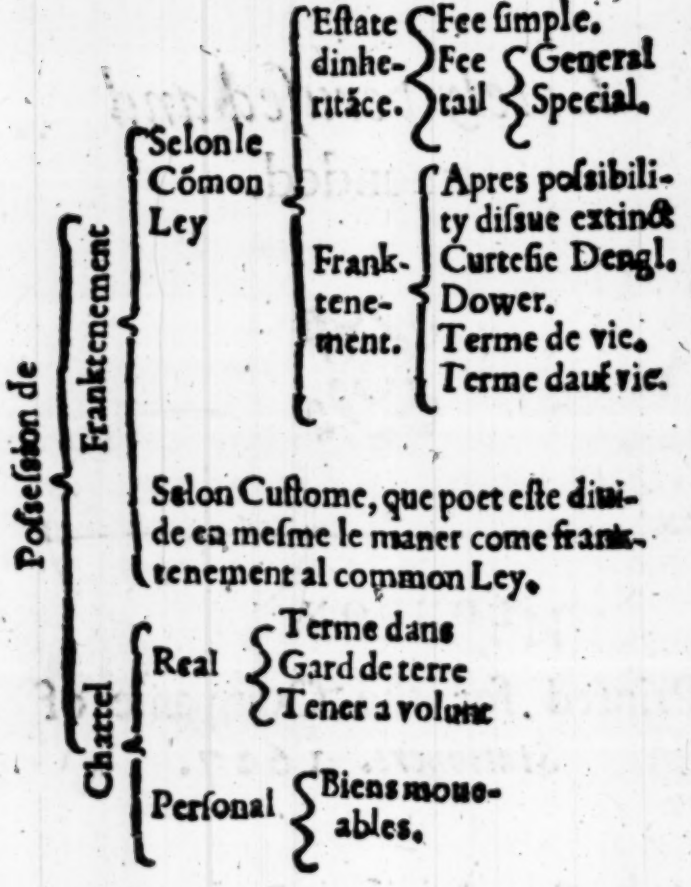
LONDON,

Printed for the Companie of *Stationers.* 1627.

41-12-30-12

Cum Priuilegio Regiæ Maieſtatis.

A figure of the diuision of Possessions.



Fee simple. Fol. 2

TEnant in fee simple is hee which hath Lands or Tenements to hold to him and to his heires for euer: and it is called in Latin Feodum simplex: for Feodum is called inheritance, and Simplex is as much to say, as lawfull or pure, and so Feodum simplex, is as much to say, as lawfull or pure inheritaunce: For if a man will purchase lands or tenements in fee simple, it behoueth him to haue these words in his purchase, To haue and to hold vnto him and to his heires: for these wordes (his heires) make the estate of inheritance, Anno 10. Henrici 6. fol. 38. for if any man purchase land by these wordes, To haue and to hold to him for euer: or by such words, To haue and to hold to him and to his assignes for euer, In these two cases hee hath none estate but for terme of life, for that that hee lacketh these words (his heires) which words onely make the estate of inheritance in all feoffements and grants.

And if a man purchase lands in fee simple, & die without issue, euery one that is his next cosin collaterall, of the whole bloud, how far soeuer that he be from him of degree, may inherit & haue the same land as heire vnto him. But if there be father & son, and the father hath a brother which is vncle vnto the son, & the son purchaseth land in fee simple, & dieth without issue liuing the father, the vncle shal haue ℔ land, as

heire vnto the sonne, and not to the father (yet the father is more nigh of bloud vnto the son) for that that there is a ground in the law, that inheritance may lineally descend, but not lineally ascend: yet if the son in such case die without issue, & his Vncle entreth into the land as heire vnto the son (so as he ought by the law) and after if the Vncle decease without issue living the father, then shall the father haue the land as heir vnto the vncle, & not as heir vnto the son, for that that he commeth vnto the land by collateral discent, & not by lineal ascention.

And in such case where the son purchaseth land in fee simple, and dieth without issue, they of his bloud on the Fathers side shall inherit as heire vnto him, before any of the bloud of the Mothers side. But if he haue no heire on the Fathers side, then shall the land descend vnto his heire on the mothers side. And this is the opinion of the Justices M. 12. E 4. fol. 35 But there it was holden if any land descend vnto a man by the Fathers side which dieth without issue, that his next heire on the Fathers side shal inherit vnto him that is to say, the next of bloud of the father of the Grandfathers side. And for default of such an heire, they that be of the fathers bloud of the part of the mother of the father (that is to say the Grandmother) ought to inherit. And if there bee no such heire on the fathers side, then the Lord shall haue the land by Escheate. And so it is if a mā take a wife inheritor in fee simple,

which

which hath iſſue a ſonne and dieth, and the ſon entreth into the tenements as ſonne and heire vnto his mother, and after dyeth without iſſue, the heires on the mothers ſide ought to inherit the tenements, and not the heires on the fathers ſide.

And if there bee no heires on the mothers ſide, then the Lord of whom the ſame land is holden, ſhall haue the ſame land by eſcheat. In the ſame manner it is if Lands deſcend vnto the ſon on the fathers ſide, which entreth, and after dieth without iſſue, the land ſhall deſcend vnto the heires on the fathers ſide, & not vnto the heires on the mothers ſide. And if there be none heires on the fathers ſide, then the Lord of who the land is holden, ſhall haue the ſame land by eſcheat. And ſo ye may ſee the diuerſitie, where the ſonne purchaſeth lands in fee ſimple, & where he commeth vnto thoſe lands or tenements by diſcent on the fathers ſide, or on the mothers ſide.

Alſo if there be three brethren, & the middle brother purchaſeth land in fee ſimple and dieth without iſſue, the elder brother ſhall haue the land by diſcent & not the yonger. Alſo if there be three brethren, and the yongeſt brother purchaſeth land in fee ſimple, and dieth without iſſue, the elder brother ſhall haue the land by deſcent, & not the middle brother, for that that the elder brother is more worthy of land.

And it is to be vnderſtood, that no man ſhal haue land in fee ſimple by deſcēt as heir vnto

any man, vnleſſe hee be his heire of the whole bloud. For if a man haue iſſue two ſonnes by two venters, and the elder purchaſeth land in fee ſimple and dieth without iſſue, the yonger brother ſhal not haue the land, but the vncle of the elder brother, or ſome other his nigh coſin ſhall haue it, for that that the yonger is but of the halfe bloud to the elder brother. And if a man haue a ſonne and a daughter by one venter, and a ſonne by another venter, & the ſonne by the firſt venter purchaſeth Land in fee ſimple and dieth without iſſue, the ſiſter ſhal haue the Land by diſcent as heire vnto her brother, and not the yonger brother, for that that the ſiſter is of the whole blood to her elder brother.

And alſo where a man is ſeiſed of land in fee ſimple, and he hath iſſue a ſon and a daughter by one venter, and a ſonne by another venter and dieth, and the elder ſon entreth, and dieth without iſſue, the daughter ſhal haue the land and not the yonger ſonne, and yet is the yonger ſon heire vnto his father, but not vnto his brother. But if the elder ſonne enter not into the land after the death of his father, but dieth before entrie be made by him, then the yonger brother may enter and haue the land as heire vnto his father. But where the elder ſonne in the caſe aforeſaid, entreth after the death of his father, and thereof haue poſſeſſion, then the ſiſter ſhal haue the land: Quia poſſeſſio fratris de feodo ſimplici, facit ſororē eſſe hæred', For the poſſeſſion of the brother in fee ſimple

ple maketh the ſiſter to be heire.

But if there be two brethꝛē by diuers venters, and the elder is ſeiſed in fee ſimple and dieth without iſſue, and his Vncle entreth as heire vnto him, which alſo dieth without iſſue, then the ponger brother may haue the lād as heire vnto his vncle, becauſe he is of the whole bloud to him, though he be but of haife bloud vnto his elder brother.

And it is to bee vnderſtood that this word (Inheritance) is not onely vnderſtood where a man hath lands or tenements by diſcent of heritage: But alſo euery fee ſimple or fee taile that a man hath by his purchaſe, may be ſaid inheritance, for that that his heires may inherite them. For in a writ of Right that a man bringeth of land, that was of his owne purchaſe, the writ ſhall ſay, Quam clamat eſſe ius & hæreditatem ſuam, that is to ſay, which he claimeth to bee his right and his inheritance. And ſo it ſhall be ſaid in diuers other writs which a man or a woman bringeth of their owne purchaſe, as it appeareth by the regiſter.

And of ſuch things as a man may haue a manuall occupation, poſſeſſion, or receit, as of lands, tenements, rents, and ſuch other, a man ſhall ſay in his pleading, and way of barre, that one ſuch was ſeiſed in his demeſne as of fee. But of ſuch things as lye not in manuall occupation, &c. as of Aduowſon of a Church, and ſuch maner things, there he ſhall ſay, that he was ſeiſed as of fee, and not in his

demeine as of fee: & in Latin it is in the same case said, Quod talis fuit seisitus in dominico suo vt de feodo, that is to say, That such a one was seised in his demeine as of fee, and in the other, Quod talis fuit seisitus vt de feodo, that is to say, that one such was seised as of fee.

And note well, that a man may not haue a more large ne greater estate of inheritance, than fee simple.

Also, purchase is called the possessiō of lāds or tenements that a man hath by his deed or by his agreement, vnto which possession he cōmeth, not by discent of any of his ancestors, or of his cosins, but by his owne deed.

Fee taile.

TEnant in fee taile, is by force of a statute of Westminster the second, capitulo primo: for at the cōmon law before the said statute, all inheritances were fee simple. Not all the gifts which bin specified within the said statute, where fee simple cōditionally, as it appeareth by the rehearsall of the statute. And now by the same statute tenant in the taile is said in two manners, that is to say, tenant in taile generall, and tenant in taile special.

Tenant in Taile generall, is where lands or tenements be giuen to a man and to his heires of his body begotten: in this case it is said generall taile, for that that whatsoeuer woman that the tenant taketh to wife, if he haue many wiues, and by each of them hath

issue,

issue, yet each one of these issues by possibility may inherit the tenements by force of the said gift, because that euery such issue is of his body ingendred.

In the same manner it is where lands & tenements be giuen to a woman & to the heires comming out of her body, howbeit that she haue many husbãds, yet the issue that she may haue by each husband, may inherite as issue in the taile, by force of such gifts. And therefore such gifts been called generall taile.

Tenant in taile speciall, is where Lands and tenements bee giuen vnto a man and his wife, and the heirs of their two bodies begotten. In such case none may inherite by force of such gift, but those that bee ingendred between them two, & it is called especiall taile, for that if the wife die, and hee taketh another wife and hath issue, the issue of the second wife shall neuer inherite by force of such gift: Nor also the issue of the second husband if the first husband die.

In the same manner it is, where lands and tenements bee giuen by a man vnto another with a wife, which is the daughter or cousin to the giuer, in Frankmarriage (which gift hath inheritance by these words Frankmarriage vnto it annexed) howbeit that it bee not expressly said or rehearsed in the gift, that is to say, that these Donees shall haue these Landes or Tenements to them and to their heires betweene them two ingendred, and this

is

is ſaid eſpeciall taile for that the iſſue of the ſecond wife may not inherit.

And note well, that this word Talliare, is to ſay, to ſet vnto ſome certaintie, or elſe limit vnto ſome certaine inheritance: And for that that it is limited & ſet in certaine, what iſſue ſhall inherite by force of ſuch gifts, and how long that the inheritance ſhall indure: Therefore it is called in Latin, Feodum talliatum, i. hæreditas in quandā certitudinē limitata. For if tenant in generall taile die without iſſue, the donor or his heires ſhall enter as in their reuerſion: In the ſame wiſe it is of the tenant in the taile ſpecial, &c. For in euery gift of the taile without more ſaying, the reuerſion of fee ſimple is in the donour.

And the doneés and their heires ſhall doe to the donour and to his heires ſuch ſeruices as the donour doth vnto the Lord next aboue: Except the doneés in frankmarriage, which ſhall hold quietly from euery manner ſeruice, (vnleſſe it be for Fealty) vntill the fourth degree be paſt. And after that the fourth degree is paſt, the iſſue in the fift degree, and ſo forth the other iſſues after him, ſhall hold of the donor and of his heires as they hold ouer, as is aforeſaid.

And the degrees in frankmarriage ſhall be accompted in ſuch manner, that is to ſay, from the donor to the doneés in frankmarriage the firſt degree, for that that the wife, that is one of the doneés, ought to be daughter, ſiſter, or

other

other cosin to the donor: And from the donees vnto their issue shall bee accounted the second degree: And from their issue vnto their issue, the third degree, and so forth.

And the cause is, for that after euery such gift, the issues that come of the donor, and the issues that come of the donees after the fourth degree past of both parties in such forme to bee accounted, may betwixt them by the Law of holy Church intermarrie. And that the donee in frankmarriage shall be the first degree of the foure degrees, a man may see in a plea vpon a writ of Right of ward, Anno 31 Edwardi 3. where the plaintife pleadeth that his ayel or Grandfather was seised of certaine Lands, &c. And that hee held of another by knights seruice &c. which gaue the land vnto one Raufe Holland with his sister in frankmarriage, &c. And also these tailes beforesaid, be specified in the said statute of Westminster the second.

And there bee diuerse other estates in the taile, howbeit that they be not specified by expresse words in the said Estatute, but they be taken by the equitie of the Statute. As if lands be giuen vnto a man and to his heires males of his bodie engendred, in such case his heire male shall inherite, and the issue female shall neuer inherite: yet in these other tailes aforesaid it is otherwise. In the same manner it is if Lands be giuen to a man and to his heires females of his body ingendred.

In

In this case his issue females shall inherit by force and forme of the said gift, and not the issue male, for that in such cases where the gift is, who ought to inherit, and who not, the will of the donour shall be obserued.

And in case where Lands be giuen vnto a man & to his heirs males issuing of his body, and he hath issue two sonnes & deceaseth, the elder sonne entreth as heire male, & hath issue a daughter & deceaseth, his brother shall haue the land and not the daughter, for that the brother is heire male. But it shal be otherwise in these other tailes aforesaid, which bin specified in the said statute, the daughter shal inherit before the brother.

And if lands be giuen vnto a man, and to his heires males of his body ingendred, and he hath issue a daughter, which hath issue a sonne and deceaseth, and after that the Donee deceaseth: in this case the sonne of the daughter shall not inherit by force of the taile, for that, whosoeuer shall inherite by force of a gift in the taile made vnto the heires males, behoueth to conuey his descent alway to the males, Mich. decimo octauo Edwardi tertij fol. 25. But in such case the donor shall enter, for that the Donee is dead without issue male in the Law. Inasmuch that the issue of the daughter may not conuey to him the descent by heire male. And in the same maner it is where lands be giuen to a man and to his wife, and to his heires

males

males of their two bodies ingendred.

Also if Tenements be giuen to a man, and his wife, and to the heires of the body of the man ingendred, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

And if lands bee giuen to the husband and to the wife, and to the heires of the husband which he ingendreth of the body of his wife: In this case the husband hath estate in the speciall taile, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heirs of the wife of her body by the husband ingendred: then the wife hath estate in the speciall taile, and the husband but for terme of life. But if Lands be giuen to the husband and the wife, and to the heires that the husband ingendreth on the bodie of the wife: In this case both haue estate in the taile, for that this word (heires) is limited no more to the one than to the other.

Also if lands be giuen to a man and to his heires that hee ingendreth on the body of his wife: In this case the husband hath estate in the taile speciall, and the wife nothing.

Also if a man hath issue a sonne, and deceaseth, and the land is giuen to the sonne, and to the heires of the body of his father ingendred, this is a good taile, & yet the father was dead at the time of the gift.

Also

Also there be many other estates in the taile by the equitie of the said Estatute, that be not specified heere. But if a man giue Lands or Tenements to another, to haue and to hold to him and to his heires males, or to his heires females, hee to whom such gift is made hath fee simple, for that it is not limited by the gift of what body the issue male or female shal be, and so it may not in any thing be taken by the equitie of the said Estatute, and therefore he hath Fee simple.

Tenant in taile after possibilitie of issue extinct.

TEnant in the taile after possibilitie of the issue extinct, is whereas Landes or Tenements be giuen vnto a man & to his wife in speciall taile, if one of them decease without issue, he that suruiueth, is tenant in the tayle after possibilitie of issue extinct. And if they haue issue, during the life of the issue, hee that suruiueth, shall not bee said tenant in the taile after possibilitie of issue extinct: yet if the issue decease without issue, so that there be none a-liue that may inherit by force of the taile, then he that suruiueth of the donees is tenant in the taile after possibilitie of issue extinct.

Also, if Lands bee giuen to a man and to his heires that be ingendred on the body of his wife. In this case the wife hath nought in the Tenements, and the husband is seised

as

as donee in speciall tayle. And in this case if the wife decease without issue of her body ingendred by her husband, then the husband is tenant in the tayle after possibility of issue extinct.

And note well, that none may be tenant in the taile after possibilitie of issue extinct, but one of the donees, or the donee in speciall taile, for the donee in general taile may neuer be said tenant in the taile after possibilitie of issue extinct, for that alway during his life, he may by possibility haue issue that may inherit by force of the same taile. And so in the same manner the issue that is heire vnto the donees in a speciall taile, may not be said tenant in taile after possibility, &c. causa qua supra.

And tenant in taile after possibility of issue extinct shall neuer be punished of wast, for the inheritance that once was in him, An. 10. Hen. 6. fol. 1. But he in the reuersion may enter if he doth alien in fee, An. 45. E. 3. fol. 22.

Tenant by the Curtesie of England.

TEnant by the Curtesie of England, is where a man taketh a wife seised in fee simple, or in fee taile generall, or as heire in the taile special, & hath issue by the same wife male or female borne aliue, the issue after being dead or aliue, if the wife decease the husband shal hold the same during his life by the Law of

of England, and this is called tenaunt by the Curteſie, for that it is not vſed in any other Realme but onely in England. And ſome ſay that he ſhal not be ſaid tenant by the curteſie, but if the child that hee hath by his wife be heard cry, for by the cry is the proofe that the child that he had by his wife, was borne alive

Tenant in Dower.

TEnant in dower is, where a man is ſeiſed of certaine lands or tenements in fee ſimple or in generall taile, or as heire in the taile ſpeciall, and taketh a wife and deceaſeth, the wife after the deceaſe of her huſbād ſhalbe indowed of the third part of ſuch lands or tenemēts that were her huſbands any time during the couerture, to haue & to hold to the ſame wife in ſeueralty, by meets and bounds for terme of her life, whether ſhee haue by her huſband iſſue or none, and of what age that the wife be, ſo that ſhe paſſe the age of nine yeares at the time of her huſbands death, or elſe ſhe ſhal not be endowed.

And note well, that by the common law the wife ſhal not haue for her dower but the third part of the tenements which were her huſbands during the eſpouſels. By cuſtome of ſome Countrey ſhe ſhal haue the halfe: and by cuſtome of ſome Town, or Borough, ſhe ſhall haue the whole: And in all theſe caſes ſhe ſhal be ſaid tenant in dower.

Alſo

Also there is two other maner of Dowers, that is to say, Dower called dowment at the Church doze, and Dower called dowment by the fathers assent. Dowment at the church doze, is where a man of full age is seised in fee simple which shall be wedded vnto a wife, when he commeth to the Church doze, and and there after affiance and truth pleight made betweene them, endoweth his wife of his whole land, or of the halfe, or lesse parcell, and there openly declareth the quantitie, and the certaintie of his land that she shall haue for her Dower: In this case the wife after the death of her husband shall enter into the sayd quantitie of land, of which her husband endowed her, without the assignment of any mā. Dowment by the fathers assent is, where the father is seised of Lands or tenements in Fee, and his sonne and heire apparent (when hee is wedded) endoweth his wife at the Church doze of parcell of the lands, or tenemēts of his fathers, by the assēt of his father, and assigneth the quantitie of the parcels: In this case after the death of the sonne, the wife shall enter into the same parcell without the assignment of any other. But it hath bin said in this case, that it behoueth the wife to haue a deed of the father, prouing his assent and consent of such endowment. And if after the death of her husband shee enter and agree to any such dower of the said two dowers at the Church doze, then she is concluded to claime

any other Dower by the common law of any Lands or tenements, which were of the said husband. But if she will, she may refuse such dower at the Church doore, and then she may be endowed after the course of the Common law. And note well, that no wife shalbe endowed of the fathers assent, in the forme aforesaid, saue where the husband is sonne & heire apparant to his father.

Inquire of these two cases of Endowment at the Church doore, &c. if the wife at the time of the death of her husband passe not the age of nine yeeres, if she shall haue such dower or no.

And note well, that in all cases where the certaintie appeareth, what Lands or Tenements the wife shall haue for her Dower, the wife may enter after the death of her husband, without assignement of any other: But where the certaintie appeareth not, as to bee endowed of the third part, to haue in seuerall, or to bee endowed of the halfe after the customs to hold in seueraltie: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husband, because it is not limited before the assignement, what parts of Lands or Tenements she shall haue for her Dower. But if there be two Ioyntenants of certaine Lands in Fee, and the one alieneth that that to him pertaineth and belongeth, to another in Fee, which taketh a wife and after dyeth: In this case

the

the wife for her dower shall haue the third part of the halfe that her husband purchased, to hold in common, and occupie in common, as her part amounteth, with the heire of her husband, and with the other Ioyntenaunt which aliene not, for that in such case her Dower may not bee assigned by meetes and bounds.

And it is to bee vnderstood, that the wife shall not be endowed of lands or tenements that her husband ioyntly held with another at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesaid. And it is to wit, that if the Tenant in taile endow his wife at the Church doore as is aforesaid, that shall serue for little or nought to his wife, for that, that after the death of her husband the issue in the taile may enter vpon the possession of the wife, and so may he in reuersion if there be no issue in the taile alive.

Also, if a man seised in Fee simple being within age, endow his wife at the Church doore, and dieth, and the wife entreth: In this case the heire of the husband may put her out. But otherwise it is as it seemeth, where the father is seised in Fee, & the sonne within age endow his wife of his fathers assent, the father then being of full age.

And there is another Dower which is called Dowment De la pluis beale: And that is in such case, that a man is seised of xl. acres

of land, and he holdeth xx. of the said xl. acres of one man by Knights seruice, and the other xx. acres of another in socage, and taketh a wife, and hath issue a sonne, and dyeth, his sonne being within the age of fourteene yeres, and the Lord, of whom the land is holden by Knights seruice, entreth into the xx. acres of Land holden of him, and theim hath and occupyeth as Warden in Chiualrie during the childs nonage, and the childs mother entreth in the remnant, and it occupieth as garden or Warden in Socage: If in this case the wife bring a writ of Dower against the Warden in Chiualry, to be endowed of the tenements holden by Knights Seruice in the Kings Court, or in any other Court, the Garden in Chiualry may plead in such case all the matter, and shew how the wife is warden in Socage, as is aforesaid, and pray that it may be adiudged by the Court, that the wife endow her selfe of the most faire, called Pluis beale, of the tenements that she hath as warden in Socage, after the value of the third part that she claimeth to haue of the tenements in Chiualrie by her writ of Dower, and if the wife may not gainsay it, then the iudgement shall be made, that the warde in Chiualry shal haue the lands holden of him during the nonage of the childe quite from the woman, &c. And that the woman may endow her selfe of the most faire part of the lands that shee hath as warden in Socage to the value of the third

part

part that the warden in chiualry hath, &c.

And after such iudgement giuen, the wife may take her neighbors, and in their presence endow her selfe by meetes and bounds of the fairest part of the tenements that she hath as warden in Socage, to the value of the third part of the lands that the warden in chiualry hath, and that to haue and hold for terme of her life. And such Dower is called Dower of the fairest part, or De pluis beale.

With this agreeth P. 45. Edw. 3 fol. 4. But there it was said, that after the time that the heire comes to his full age, the wife shall haue a new action of Dower against the heire, to be endowed of the third part of all that the man died seised. And note well, that such dowment may not be, but where the iudgemēt is giuen in the kings court, or in some other court. And the wife may do this for saluation of the estate of the warden in chiualry during the nonage of the child. And so ye may see fiue manner of Dowers, that is to say, Dower by the common Law, Dower by custome, Dower at the Church doore, Dower of the Fathers assent, and Dower of the most faire. And remember that in euery case where a man taketh a wife seised of such estats of tenemēts &c. so that the issue that he hath by his wife may by possibilitie inherite the same tenements of such estate that the wife hath, as heire to the wife: In such case after the wife is dead, hee shall haue the same tenements by the Curtesie of Eng-

land and otherwise not.

And also in euery case where the wife taketh an husband seised of such estate of tenements, &c. so that by possibility it may happē the wife to haue some issue by her husband, and that the same issue may by possibility inherit the same tenements of such estate that the husband had as heire to his father, of such Tenements she shall haue her dower, and otherwise not. For if the tenements bee giuen vnto a man and to his heires that he getteth on his wiues body, in such case the wife hath nought in the tenements, and the husband hath estate but as donee in special taile: Yet if the husband dy without issue, the same wife shalbe endowed of the same tenements, for that the issue that she by possibilitie might haue had by the same husband, may inherit the same tenements. But if the wife decease, liuing the husband, which after taketh another wife, the second wife shall not be endowed in this case, Causa qua supra.

A man was seised of certaine Lands, and tooke a wife, & after aliened the same Lands with warrantie, and after the feoffour and the feoffee died, & the wife of the feoffor bringeth an action of Dower against the issue of the feoffee, and hee vouched the heire of the feoffour, and during the voucher and not termined, the wife of the feoffee bringeth an action of dower against the heire of the feoffe, and demaundeth the third part of all that her husband was seised, and would not demaund

maund the third part of those two parts that her husband was seised, it was adiudged that shee should haue no iudgement vntill the time that the other plee were determined.

And also note that Vauisor saith, that if a man be seised of lands, and committeth Felonie, and alieneth, & after is attainted, the wife shal haue good action of dower against the feoffee. But if it be escheated to the K. or vnto the lord, she shall haue no writ of dower. And so see the diuersitie, and inquire the cause.

Tenant for terme of life.

TEnant for terme of life is, where a man letteth lands or tenements to another for terme of life of the lessee, or for terme of life of another man: In such case the lessee is tenāt for terme of life. But by common language, hee that holdeth for terme of his owne life, is called tenant for terme of life, and hee that holdeth for terme of another mans life, is called Tenannt for terme of another mans life. And it is to bee vnderstood, that there is Feoffor and Feoffee, Donor and Donee, Lessour and Lessee. The Feoffor is properly where a man infeoffeth another in any lands or tenements in fee simple, he that maketh the feoffemēt is called the Feoffor, and he to whom the feoffement is made, is called the Feoffee. And the donour is properly, where a man giueth certaine Lands or Tenements to another in

the taile, he that maketh the gift is called donor, and he to whom the gift is made is called donee. And lessour is properly where a man letteth to another certaine lands or tenements for terme of life, for terme of yeres, or to hold at will, hee that maketh the Lease is called lessour, and he to whom the lease is made is called lessee: and euery one that hath estate in Lands or Tenements for terme of his owne life, or for terme of another mans life, is called Tenaunt of freehold. And none of lesse estate may haue freehold, but they of greater estate may haue freehold, for tenaunt in fee simple hath freehold, and tenant in the taile hath also freehold.

Tenant for terme of yeares.

TEnant for terme of yeres is, where a man letteth Lands or tenements to another for terme of certaine yeares after the number of yeares that is accorded between the lessor and the lessee, and when the lessee entreth by force of the lease, then is he tenāt for terme of yeres, and if the lessour in such case reserue to him a yearely rent vpon such lease, hee may chuse for to distraine for the rent in the tenements letten, or else hee may haue Action of debt for the arrerages against the lessee. But in such case it behoueth that the lessour bee seised in the same tenements at the time of his lease, for

it is a good plee for the lessee to say, that the lessor had nothing in the tenements at the time of the lease, except the lease be made by deed indented, in which case then such plee lyeth not for the lessee to plead.

And it is to be vnderstood, that in a Lease for terme of yeares, by deed or without deed, it needeth no liuerie of seisin to bee made to the lessee, but he may enter whensoeuer he will by force of the same Lease. But of feoffements made in the Countrie or gifts in the taile, or Leases for terme of life, in such cases where freehold shall passe, if it be by deed or without deed, it behoueth to haue liuerie of seisin, &c. But if a man let Lands or tenements by deed or without deed for terme of yeares, the remainder ouer to another for terme of life, or in the taile, or in fee, then in such case it behoueth that the lessor make liuerie of seisin to the lessee for terme of yeares, or else there shall nothing passe to them in the remainder, though the lessee enter in the tenemēts. And if the termor in such case enter before any such liuery of seisin made vnto him, then is the freehold and the reuersion in the lessor. But if he make any liuery of seisin vnto the lessee, then is the freehold with the fee to them in the remainder after the forme of the grant, and will of the lessor.

And if a man will make a feoffement by deede or without deede, of Landes or Tenements that he hath in many Townes in one Shire, if the liuery of seisin be made in one par-

parcell of the tenements in one Towne in the name of all, it ſuffiſeth for all the other lands or tenements comprehended in the ſame feoffement, in all other townes in the ſame Shire. But if a mā make a deed of feoffement of lāds or tenements in diuers ſhires, there it behoueth him to haue in euery ſhire a liuery of ſeiſin. And in ſome caſe a man ſhall haue by the grant of another fee ſimple, fee taile, or freehold, without liuery of ſeiſin. As if two men be, and each of them is ſeiſed of a quantitie of land within one ſhire, & the one graunteth his land to the other in exchāge for that land that the other hath, & in the ſame manner the other granteth his land vnto the firſt grantor in exchange for the lād that the firſt grantor hath: In this caſe each may enter in ỹ others lāds ſo takē in exchange, without any liuery of ſeiſin. And ſuch exchange made by words, of tenements within the ſame Shire without any writing, is good enough. And if the Lands or tenements be in diuers ſhires, that is to ſay, if that ỹ one haue in one ſhire, & ỹ the other haue in another ſhire, it behoueth to haue a deed indented made betweene them of ſuch exchange.

And note, that in exchanges it behoueth that the eſtates that both parties haue in the lands ſo exchanged, be equal: For if the one willeth & granteth that the other ſhall haue his lād in the taile, for the land that he hath of the grant of the other in fee ſimple, though the other agree to that, yet this exchange is but void, for that

that the eſtates be not euen.

In the ſame manner it is where it is granted and agreed betweene them, that the one ſhal haue in the one Land fee taile, & the other ſhall haue in the other Land but terme of life. Or if one ſhall haue in the one Land fee taile generall, and the other in the other Land fee taile eſpecial &c. So alway it behoueth that in exchange the eſtate of both parties be euen, that is to ſay, if the one haue fee ſimple in the one Land, that the other ſhall haue ſuch eſtate in the other land, and if the one haue fee taile in the one land, then the other ſhall haue likewiſe in the other Land. Et ſic de alijs ſtatibus. But it is nothing to charge of the euen value of the lands, for though that the land of the one is ſo much more in value than the land of the other, this is nothing to the purpoſe, ſo that the eſtates made by the exchange be euen, & in exchange by two grants: for euery party granteth his Land to the other in exchange, and in each of their graunts mention ſhalbe made of the exchange.

And if a man let land to another for terme of yeres, though the leſſor die before the leſſee enter into the tenements, yet may he enter into the tenements after the death of the leſſor, for that that the leſſee by force of the leaſe hath right incontinent to haue the tenements after the fourme of the Leaſe. But if a man make a deed of feoffement vnto another, and a letter of atturney to a man to deliuer to him

ſeiſin

seisin by force of the same deed, yet if the liuery of seisin bee not made in the life of him that made the deede, it auayleth not, for that the other hath no maner of right to haue the tenements after the purport of the deed before the liuerie of seisin, &c. And if no liuerie be made, then after the death of him that made the deed, the right of such tenemẽts is incontinently in his heire, or in some other. Also if tenements be let to a man for terme of halfe a yeare, or for terme of a quarter of a yeare, &c. In such case, if the lessee make waste, the Lessor shal haue against him a writ of waste, and the writ shall say, Quod tenet ad terminum annorum. But hee shall haue a speciall declaration vpon the troth of this matter, & the plea shall not abate the writ for that that hee may haue no other writ vpon the matter. Añ 7. H 7. fol. 1.

Tenant at will.

TEnant at will is, where Lands or Tenements bee letten by a man vnto another, To haue and to hold to him at the will of the lessour, by force of which lease the lessee is in possession: In such case the lessee is called tenant at will, for that hee hath no certaine nor sure estate, for the lessour may put him out at what time it pleaseth him: yet if the lessee sow the land, & the lessor (after the sowing and before that his graines be ripe) put him out, yet shal the lessee haue his graines, and shall haue free egresse and regresse to reape and to carrie his

his graynes, for that he wist not at what time his lessour would enter vpon him. Otherwise it is if tenant for terme of yeres before the end of his terme soweth the land, and the terme end before that his graines be ripe: In this case the lessor, or he in the reuersion shall haue the graines, for that the termor knew well the certaintie of his terme, and when his terme should be ended.

Also, if a house bee let to a man to hold at will, by force of which the lesee entreth into the house, within which house he bringeth his houshold stuffe, and after the lessour putteth him out, yet shall he haue free entrie, egresse, and regresse in the same house by reasonable time to carrie his goods and houshold stuffe. And if a man beseised of a house in fee simple, fee taile, or for terme of life, the which hath certaine goods within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shal his executors haue free entrie, egresse, and regresse to carrie out of the house the goods of the testator, by a reasonable time.

Also, if a man make a deed of Feoffement vnto another of certaine land, and deliuereth to him the deed, but not liuerie of seisin: in this case hee to whom the deed is made may enter into the land, and hold and occupie it at the will of him that made the deed, for that, that it is proued by the words of the deed, that it is his will that the other shal haue the land. But

he

he that made the deed, may put him out when he will.

Also if a house bee let to hold at will, the lessee is not holden to sustaine or repaire the house, as tenant for terme of yeares is holden to do. But if the lessee at will make voluntary wast, as in pulling downe of houses, or in cutting or selling of trees: It is said that the lessor shall haue for that against him an action of Trespas. As if I deliuer to a man my sheepe to dung or marle his land, or mine oxen to eire his land, and he slaieth the beasts, I may wel haue an action of Trespas against him notwithstanding the deliuerie.

Also if the lessor vpon such lease at will reserue vnto him a yeerely rent, he may distraine for the rent behind, or haue for that an action of Debt at his owne choise, Hill. 6. Rich. 2. in a Replevin.

Tenant by Copie of Court Roll,

TEnant by Copie of Court Roll is, as if a man be seised of a Mannor, within which Mannor there is a custome, & hath beene vsed in time out of mind, that certaine Tenants within the same Mannour haue vsed to haue Lands or Tenements to hold to them and to their heires in Fee simple, or in Fee taile, or for terme of life, &c. at the will of the Lord, after the custome of the same Manor: and such a tenant may not alien the land by deed, for then

this

the lord may enter as in a thing forfeit to him. But if he will alien his land to another, him behoueth after some custome, to surrender the tenements in some Court, &c. into the Lords hands, to the vse of him that shall haue the estate, in such forme, or to such effect.

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem Curia, vnum mesuagium, &c. in manus domini, ad vsū E. de A. & hæredum suorum, vel hæredum de corpore suo exeunt vel pro termino vitæ suæ, &c. Et super hoc venit prædictus E. de A. & cepit de domino in eadem Curia mesuagium prædictum, &c. Habendum & tenendū sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ suæ, ad voluntatem domini, secundum consuetudinem manerij, faciend' & reddend' inde redditus debit', seruitia, & consuetudines inde prius debita, & de iure consueta, Et dat domino de fine, &c. Et fecit domino fidelitatem, &c. That is to say, A. of B. commeth vnto this Court, and surrendreth in the same court a mease, &c. into the hands of the Lord, to the vse of E. of A. and his heires, or the heires issuing of his bodie, or for terme of life, &c. And vpon that, commeth the aforesaid E. of A. and taketh of the Lord in the same court, the foresaid mease, &c. To haue & to hold to him and to his heires, or to him and to his heirs issuing of his body, or to him for terme of life, at the Lords will, after the custome of the manor, to do and yeeld there-

therefore rents, debts, seruices, and customes thereof before due and accustomed, &c. and giueth the Lord for a fine, &c. and maketh vnto the Lord his fealtie, &c. And such tenants be called tenants by Copie of Court Rolle, for that they haue no other euidences concerning their tenements, but the Copies of the Court Rolles: And such Tenants shall not implead nor be impleaded for their Tenements by the Kings writ. But if they will implead other for their Tenements, they shall haue a plaint made in the Court of the Lord in such forme, or to such effect. A. de B. queritur versus C. de D. in placito terræ, videlicet, de vno messuagio, quadraginta acris ter', quatuor acris prati, &c. cum pertinentijs. Et facit protestationem sequi querelam istam in natura breuis Domini Regis Assisæ mortis antecessoris ad communem Legem, vel breuis Domini Regis Assisæ nouæ disseis. ad communem Legem. That is to say, A. of B. complaineth against C. of D. of a plee of Land. That is to say, of a meale, and foure acres of Land, foure acres of meadow, &c. with the appurtenances. And maketh protestation to sue his plaint in nature of the Kings writ of Assise of the death of his ancestor at the common Law, or by a writ of our Soueraign Lord the King, of Assise of nouel disseisin at the Common Law, or in nature of some other writ, &c. pledges to prosecute, J. G. &c. And though that some such tenaunts haue inheritance after the custome of the maner, yet they

they haue none estate but at the Lords will, and after the course of the Common Law, for it is said, if the Lord put them out, they haue no other remedy but to sue vnto the Lord by petition: For if they had any other remedie they should not be said tenants at the Lords will, after the customs of the Mannor, but the Lord will not breake the custome that is reasonable in such cases. But Brian chief Iustice saith, that his opinion hath alwaies been, and alwayes shall be, if such a tenant by custome (paying his seruices) be cast out by the Lord, he shal haue an action of trespas against him, H.2.E.4.fol.8. And likewise was the opinio of Danby chiefe Iustice M.7.E.4.fol.19. for he saith that the tenant by the custome, is as wel inheritable to haue the land after the custome, as wel as he that hath franktenement by the common Law.

TEnants by the Yard, be in such nature as tenants by Copie of Court Roll: But the cause for which they be called tenants by the Rodde, or Yard, is, for that when they will surrender their Tenements into the Lords hand, to the vse of another, they shall haue a little yard or rodde by the custome and vse, in their hands, which they shall deliuer vnto the Steward or Baylife, after the Custome and vse of the mannor, and he that shall haue the land, shal take the same land in the Court, and his taking shall bee entred in the Rolle. And the Steward, or the baillife, according to

the custome, shall deliuer vnto him, that taketh the Land, the same yard or another yard in the name of seisin. And for this cause they be called Tenants by the Yard. But they haue none other euidence but Copie of the Court Roll.

And also in diuers Lordships and Manors there is such a custome, if such a tenant that holdeth by the Custome will alien his Lands or Tenements, he may surrender his lands vnto the Baylife, or to the Reeue, or 2. honest men of the same Lordship, to the vse of him that shall haue the land, to haue in fee simple, fee tatle, or for terme of life, &c. and as that shall be presented at the next Court. And then he that shall haue the Land by Copie of Court Roll, shall haue the same land after the intent of the surrender. And it is to wit, that in diuers lordships, and diuers manors, there be made diuers Customes in such cases, as to take tenements, & as to plead, & as touching other things and customes to be done, and all that, that is not against reason, may well be admitted and allowed. And such tenants that hold after the custome of a Seigniory, or after the custom of a manor, though they haue estate of inheritance after the custome of the Lordship, or of the manor, yet because they haue no any freehold by the course of the common law they be called tenants of base tenure.

And diuers diuersities there bee betweene a tenant at will, which is in by the lease of his

lesse

lessor by the course of the common Law, and tenant after the custome of the mannor in the forme aforesaid. For tenant at will after the customs may haue estate of inheritance, as it is aforesaid at the lords will after the custome and vsage of the Manor: But if a man haue lands or tenements which be not within such Manor or Lordship where such custome hath been vsed in the forme aforesaid, and will let such lands or tenements to another, to haue and to hold to him and to his heirs at the will of his lessor, these words, to the heires of the lesse be void, for this is the cause, if the lesse die, and his heire enter, the lessor shall haue a good action of Trespas against him, but not so against the heire of the tenant by the custome in any case, &c. for that the custome of the Mannour in some case may helpe him to barre his Lord in an action of Trespas.

Also tenant by the custome in some places ought to repaire and sustaine the houses, and the other tenant at will ought not. Also one by the customs shall doe Fealtie, and the other not. And diuers other diuersities there bee betweene them.

Thus endeth the first Booke.

HOmage is the most honorable seruice and most humble seruice of reuerence that a Franktenaunt may doe to his Lord: For when the Tenaunt shall make Homage to his Lord, he shall bee vngirt, and his head vncouered, and his Lord shall sit, and the Tenaunt shall kneele before him on both his knees, and hold his hands ioynted together betweene the handes of his Lord, and shall say thus: I become your man from this day forward of life and limme, and of earthly worship, and vnto you shalbe true and faithfull, & beare you faith for the tenements that I claime to hold of you, (sauing the faith that I owe vnto our Soueraigne Lord the King.) And then the Lord so sitting shal kisse him.

But if an Abbot, or Priour, or any other man of religion shall make homage vnto his Lord, hee shall not say, I become your man, for that he hath professed himselfe onely to be Gods man: But he shall say thus, I doe you homage, and vnto you shall be true and faithfull, and beare you faith for the Tenements that I claime to hold of you: Sauing the faith that I owe vnto our Soueraigne Lord the King.

Also, if a woman sole shall make Homage vnto the Lord, shee shall not say, I become your woman, for that is not conuenient for a woman to say that shee shall become a woman to any but onely to her Hus-

band

band when she is wedded: But she shall say, I make vnto you Homage, and to you shal be true and faithfull, and shal beare you faith for the tenements that I hold of you, sauing the faith that I owe to our Soueraign Lord the King.

But if a man haue seuerall tenancies which he holdeth of seuerall Lords, that is to say, euery tenancie by Homage: Then when hee maketh Homage vnto one of his Lords, hee shall say in the end of his Homage, Sauing the faith that I owe vnto the King, and vnto my other Lords.

And note well, that none make Homage, but such as haue estate in fee simple, or in fee taile in his owne right, or in any other mans right: For it is a ground in the law, that he that hath estate but for terme of life, shal make none homage, nor take none homage

For if a woman haue lands or tenements in fee simple, or in fee taile, which shee holdeth of her Lord by Homage, and taketh an husband, and hath issue, then the husband in the life of the wife shall make homage, for that he hath title to haue the land by the curtesie, if he suruiue his wife: And also he holdeth in the right of his wife. But afore issue betweene them, the Homage shall be made in both their names: But if the wife decease before homage made by the husband in the wiues life, and the husband holdeth himselfe in as tenant by the Curtesie, hee shall make no Homage vnto

his Lord, for that he hath then none estate but for terme of life. More shall be said of homage in the tenure of homage auncestrell.

Fealty.

FEalty is as much to say, as Fidelitas in Latin: and when a franktenant shall make Fealty vnto the Lord, hee shall hold his right hand vpon a booke, and shall say thus:

Heare you this my Lord, that I vnto you shall be faithfull and true, and beare you faith for the lands and tenements, that I claime to hold of you, and truly to you shall do the customes and seruices that I ought to do vnto you at termes assigned, as God me helpe & all his Saints, & then he kisseth the booke. But he shal not kneele when he maketh his fealty, nor shall make such humble reuerence, as is aforesaid in Homage. And great diuersitie there is had betweene making of Fealty, and of Homage: For Homage may not bee made but to the Lord himselfe. But the Steward of the Lords Court, or the Bailife may take Fealty for the Lord.

Also tenant for terme of life shall make fealty, and yet he shall make none homage. And diuers other diuersities there be betweene homage and fealty.

Also a man may see a good note, Anno 15. Edw. 3. where and how a man and his wife made homage & fealty in the common banke, which is written in such forme, Note that

John

John Lewknor & Elizabeth his wife made Homage vnto William Thorpe in this manner: The one and the other held ioyntly their hands betweene the hãds of William Thorpe, and the husband said in this wise: Wee vnto you make homage, and beare you faith for the lands that we hold of A. your conusor, which hath granted your seruices in B. and in C. and the other townes, &c against all men (saueing the faith that we owe vnto our Soueraigne Lord the King, and to his heirs, and to our other Lords) and the one and the other kissed him. And after they made Fealty, and the one & the other held their hands together vpon a book, and the husband said the words, and both kissed the booke. More shall bee said of Fealty in the tenure of Socage, and in the tenure of Frankalmoigne, and in the tenure of Homage auncestrell.

Escuage.

EScuage is called in Latin Scutagium, that is to say, seruice of shield. And such a tenãt that holdeth his land by Escuage, holdeth by knights seruice. And also it is commõly said, that some hold by a Fee of knights seruice, & some by ỹ halfe fee of knights seruice, &c. And it is said, that when the K. maketh a voyage royal into Scotland for to subdue the Scots he that holdeth by a Fee of knights seruice, behoueth to be with the king by forty daies, wel and conuenably arraied for the war. And

likewise he that holdeth his land by the halfe of a fee by Knights seruice, ought to be with the king by 20. daies. And he that holdeth his Land by the fourth part of a fee by Knights seruice, him behoueth to be with the King by ten daies, and so after the quantitie, hee that hath more, to do more, and hee that hath lesse, to do lesse.

But it appeareth by the plees & arguments made in a good plee vpon a writ of Detinue of an Obligation, brought by one Henry Gray, Añ 7. E. 3. fo. 29. that it needeth not to him that holdeth by Escuage to goe himselfe, if he will find an able person for the warre conuenably arraied for the war, to go with the king: and that seemeth good reason: for it may be, that he that holdeth by such seruice is sicke, in such wise that he may not go nor ride.

And also an Abbot, or any other man of religion, or a woman sole that holdeth by such seruice, ought not in such case to go in proper person. And sir William Herle that time chiefe Justice of the common Place said in the said Plee, that Escuage shall not be granted, but where the king himselfe goeth in proper person. And so it abode in iudgement of the same plee, if these xl. daies shall bee accompted from the day of the Muster of the kings host made by the Commons and the kings commandement: Or else from the day that the king first entreth into Scotland, &c, therfore inquire of this matter.

And

And after such voyage into Scotland it is commonly said, that by the authority of Parliament, the Escuage shalbe set and put in certaine: that is to say, a certaine sum of money how much euery one that holdeth by a whole fee of Knights seruice, which was not in his owne proper person, nor none other for him with the King, shall pay vnto the Lord, of whom he holdeth his land by escuage. As put case that it was ordained by authority of parliamẽt, that euery one that holdeth by a whole fee by Knights seruice, which was not with the King, shall pay to his Lord xl.s. That he that holdeth by the halfe of a fee by Knights seruice, shall pay vnto his Lord but xx.s. and so who more, more, and who lesse, lesse. And some tenants hold, that if Escuage runne by authoritie of Parliament to any sum of money, that they shall pay but the halfe of that summe, and some but the fourth part of that summe. But because the Escuage that they shall pay is not certaine, for that it is at no certaine what the Parliament will assesse the Escuage, they hold by Knights seruice. But otherwise it is of Escuage certaine, of which shalbe spoken of in the tenure of Socage.

And if a man speake generally of Escuage, it shall be vnderstood by the common speech of Escuage not certaine, which is Knights seruice: And such Escuage draweth vnto him Homage, and Homage draweth vnto him Fealty, for Fealty is incident to euery maner of

seruice

seruice, but to the tenure of frankalmoigne, as it shalbe said hereafter in the tenure of frankalmoigne: So as he that holdeth by Escuage holdeth by Homage, Fealty, and Escuage.

And it is to be vnderstood, that when Escuage is so sessed by authoritie of parliament, euery lord to whom the land is holden by escuage, shall haue the Escuage so sessed by the Parliament, because it is vnderstood by the law, that at the beginning such Tenements were giuen by the Lords to hold by such seruices to defend their Lords as well as the king, and to set in quiet and rest their Lords against the king of Scots aforesaid. And for that such tenements came first of the Lords, it is reason that they haue the escuage of their tenants.

And the Lords in such case may distraine for the Escuage so assessed, or they may haue the Kings writs, directed vnto the Sherifes of the Shire, to leuy such Escuage for them, as it appeareth by the Register fol 88.

But if such tenants that hold of the king by escuage, which were not with the king in Scotland, the king himselfe shall haue the escuage.

Item, in such case aforesaid, where the king maketh a voyage royall into Scotland, and the Escuage is assessed by Parliament, if the Lord distraine his tenant that holdeth of him by seruice of a whole Knights fee, for the Escuage so assessed, &c. and the tenant pleadeth

and

and will auer that he was with the king in Scotland, &c. by 40. daies, and the Lord will auerre the contrary, it is said that it shall bee tried by the certification of the Marshal of the Kings host in writing vnder his seale, which shall be sent to the Justices.

Homage, Escuage, and Fealtie.

TEnure by Homage, Escuage, and Fealty, is to hold by knights seruice, and it draweth vnto it ward, Mariage, and relefe: For when such a tenant dieth, his heire male being within the age of 21. yeares, the Lord shall haue the land holden of him vnto the age of the heire of 21. yeares, which is called ful age, for that such an heire by the vnderstanding of the law, is not able to doe knights seruice before the age of 21. yeares.

And also if such an heire be not married at the time of the death of his auncestor, then the Lord shall haue the ward and marriage of him. But if such a Tenant die his heire female beeing of the age of fourteene yeares or more, then the Lord shall not haue the ward neither of the land nor of the bodie, for that a woman of such age may haue a Husband able to doe knights seruice. But if such an heire female bee within the age of fourteene yeares and not maried at the time of the death of her auncestor, then the Lord shall haue the

ward

ward of the Lands holden of him, till the age of such an heire female of 16 yeares: For that it is giuen by the statute of Westm̄ 1. cap. 12. that by two yeares next following the said 12 yeares, the Lord may tender a conuenient mariage without disparaging of such an heire female. And if the Lord do not tender her such mariage within the said two yeares, then shee at the end of the said two yeares may enter and put out the lord. But if such an heire female be married within the age of 14. yeares in the life of the aunceſtor, and the aunceſtor die, she being within the age of 14. yeares, the Lord shall haue but the ward of the land, till an end of 14. yeares of age of such an heire female: And then her husband and she may enter into the land & put out the Lord, for this is out of the case of the Statute: Insomuch that the Lord cannot tender marriage to her that is married, &c. For before the said statute of Westm̄ 1. such illue female that was within age of 14. years at the time of the death of her aunceſtor, and after that shee had accomplished the age of fourteene yeares without any tender of marriage to her by the Lord, such an heire female then might enter into the Land, and put out the Lord, as appeareth by the rehearsall, and by the words of the same Estatute: So that the said Statute was made in such case all for the aduantage of the Lord, as it seemeth. But yet that at all times it is vnderstood by the wordes of the same

same Estatute, that the Lord shall not haue the 2. yeare after the 14. yeare, as is afore-said.

And note well, that the full age of the male & female after the common speech is said the age of 21. And the age of discretion is said the age of 14 yeares: for a child at full age, which is wedded within such age to a woman, may agree to the marriage or disagree.

And if the warden in chiualry marry once his ward within the age of 14. yeares, and after the age of 14. yeares hee disagreeth to the marriage: It is said by some folke that the child is not holden by the Law to bee married another time by his warden, for that the warden had once the marriage of him, and therefore he was out of his ward, as concerning the ward of his body. And when he had once the marriage of him, and therefore was out of his ward, hee shall no more haue the marriage of him. In the same manner it is, if the warden marry him, and the wife dye, the child being within age of 14. yeares, or 21. yeares. And that the child may disagree to such marriage when he commeth to the age of 14 yeares, it is proued by the words of the Statute of Merton cap 6. that saith thus: De dominis qui maritauerint illos quos habēt in custodia sua, villanis, & alijs, sicut burgensibus vbi disparagentur, si tales homines fuerint infra 14. annos, & talis ætatis quod matrimonio consentire non possint, tunc si pa-

reates

rentes illius cõquerant', dominus ille amittat custodiam illam vsque ad ætatem hæredis. Et omne commodũ quod inde recepẽ fuerit conuertatur in commodum hæredis infra ætatem existentis, secundum dispositionem parentum, propter dedecus ei impositum. Si autem fuerit 14. annorum & vltra quod consentire poterit, & tali maritagio cõsenserit, nulla sequatur pœna. And so it is proued by the same statute that no disparagement shall be, but where that hee that hath the ward marrieth him within the age of 14. yeares.

Also it hath bin a question how these words should be vnderstood: Si parentes conquerantur, &c. And it seemeth vnto some, that considering the statute of Magna charta cap. 6 that willeth, that hæredes maritentur absque disparagatione, &c vpon which the said Statute of Merton vpon this point is grounded, as it seemeth, and in so much as it was neuer seene that any action was brought vpon the statute of Merton for such disparaging against the warden, and if an Action may bee taken vpon such matter', it shall bee taken by common presumption before this time, or at some time to be put in vre, that these words shall bee vnderstood in such manner, Si parentes conquerantur, i. Si parentes inter se lamentantur, which is as much as to say, that if the Cousins of such a child haue cause to make lamentation and complaint amongst them for the shame done to their cousin so disparaged,

which

which is in a maner a shame to them all, then may the next cosin to whom the heritage may not descend enter, and put out the warden in Chiualry. And if he will not, another cosin of the childs may do it, and he to take the issues and profits vnto the vse of the child, & of that yeeld the child account when he commeth vnto his full age: Or else the child within age may enter himselfe, and put out the warden, &c. Sed quære de hoc.

Also there are many other kinds of disparagings, which be not specified in the same Statute: As if the heire that is in ward be married vnto one that hath but one foote, or one hand, or else deformed, or lame, or hauing an horrible disease, or else a great & continuall infirmitie: Or if the heire male be married to a woman past child bearing, And many other causes of disparaging there be, but inquire for them, for it is a good matter to learne. And of heires males that bee within age of one and twenty yeares after the death of their auncesters vnmarried: In such case the Lord shall haue the marriage of such an heire, and haue space & time to tender to him conuenable mariage without disparaging within the same time of 21. yeares.

And it is to wit, that the heire in such case may chuse if hee will bee married, or no. But if the Lord which is called warden in Chiualrie, tender a conuenable marriage to such an heire within the age of one and twen-

tie

tis & one yeares, without disparaging, and the heire refuse, and mary not himselfe within the same age: Then the said warden shall haue the value of the marriage of such an heire. But if such an heire male, marrie himselfe within the age of 21 yeares, against the will of the warden in Chiualry, then shall the warden haue double the value of the marriage, by force of the statute of Merton aforesaid, as in the same statute is more fully comprised.

And diuers tenants hold of their Lords by knights seruice, & yet they hold not by Escuage, nor pay no Escuage, as they that hold their land by castleward, that is to say, to keep a Tower of a Castle, or a gaole, or some other place by reasonable warning, whē their lords heare tell that enemies will come, or be come into England. And in many other cases a mā may hold by knights seruice, & yet he holdeth not by Escuage, nor payeth no Escuage, as shalbe said in the tenure of grand Serieanty. But in all cases where a man holdeth by knights seruice, such seruices draw to the Lord, ward, and mariage.

And if a tenant that holdeth of his Lord by seruice of a whole knights fee die, his heire being of full age of one and twenty yeres, his heire shal pay vnto the Lord C.s. for a relefe. And he that holdeh by the halfe Fee shall pay L.s.

Also if a man hold his Land of the Lord by the seruice of two knights Fees, then the heire

heire at full age at the time of the death of his auncestor, shall pay to his Lord ten pound for reliefe.

Also, if there be graundfather, mother, and sonne, and the mother dyeth liuing the father of the sonne, and after the grandfather which held his land by Knights seruice dieth seised, and the land descendeth to the son of the mother, as heire to the Graundfather, which is within age: In such case the Lord shall haue the ward of the land, but not the ward of the heire: For that none shalbe in ward of his body liuing his father, because the father during his life shall haue the mariage of his heire apparant, and not the Lord. Otherwise it is if the father bee dead liuing the mother, where the land holden in Chiualry descendeth to the sonne on the fathers side, &c.

Also if a man be seised of land which is holden by Knights seruice, and maketh a feoffement in fee to his vse, and dieth seised of the vse, his heire within age, and no will by him declared, the Lord shall haue a writ of Right, of the body and the land, like as if the tenant had died seised of the demesne. And if the heire be of full age at the death of his auncester, in such a case he shall pay reliefe, like as if he had been seised of a demesne, and that is by the statute of An. 4. H. 7. cap. 17.

Also there is a warden in right in chiualry, and a warden in deed in chiualry: warden in right in chiualrie, is where the Lord because

of his Lordship is seised of the ward of the land, and the heire vt supra. Warden in deed in Chiualrie, is where the Lord in such case after his seising granteth by deed, or without deed, the ward of the land, or of the heire, or of both to another man, by force of which grant the grantee is in possession, then is the grantee called warden in deed, &c.

Tenure in Socage.

TEnure in Socage, is where the Tenant holdeth of his Lord the tenancie by certaine seruice for all maner of seruices, so that the seruice be not Knights seruice: As where a man holdeth his land of his lord by Fealty and certaine rent for all maner of seruices: or else where a man holdeth his land by homage, fealty, and certaine rent, for all manner of seruices, for Homage by it selfe maketh not Knights seruice.

Also a man may hold of his Lord onely by fealty, & such tenure is Tenure in Socage, for euery tenure that is not tenure in Chiualrie, is tenure in Socage. And it is said, that the cause wherefore such tenure is said, & hath the name of tenure in Socage, is this: Quia hoc Socag idem est, quod seruic' Socæ, Et hæc Soca Socæ, idem est quod Caruca, s. one Soke or one plough land.

And in olde time before the limitation of

of time out of mind, great part of the tenants that held of their Lords by Socage, ought to come with their Ploughes, euerie of the said tenants by certaine dates in the yeare, to eyze and sow the Lords lands of his owne graines: But for that such works were done for the liuelode and sustenance of their Lords, they were acquited against their Lord of all manner of seruices. And for this, that such seruice was done with their Ploughes, such tenure was called Tenure in Socage. And after that such seruices were chaunged into diuerse other maner seruices, by consent of the tenants, and by the desire of their Lords, that is to say, into a yearly rent, &c. But yet the name of Socage abideth, and in diuerse places Tenaunts yet doe such seruice with their Ploughes vnto their Lord, so that all manner of seruices that be not Tenures in Knights seruice, be called Tenures in Socage.

Also if a man hold of his Lord by Escuage certaine, That is to say, in such forme, that when Escuage runneth and is assessed by the Parliament to a more summe, or to a lesse summe, that the Tenant shall pay to the Lord but halfe a marke for escuage, & neither more ne lesse, to how great summe, or little summe that the escuage runneth, in this case because the escuage is certaine before that any escuage is assessed, &c. such tenure is tenure in Socage, & not Knights seruice. But where the

ſumme that the tenant ſhall pay for Eſcuage, is not certaine, that is to ſay, where it may be that the ſumme that the tenant ſhal pay for eſcuage may be at one time more, and another leſſe, after that it is aſſeſſed, &c. then ſuch tenure is tenure by Knights ſeruice.

Alſo if a man hold his land for to pay certaine rent to his Lord for Caſtlegard, ſuch tenure is tenure in Socage. But where the tenant himſelfe ought by him, or by any other to make caſtleward, ſuch is tenure by knights ſeruice.

Alſo in all caſes where the tenant holdeth of his Lord to pay to him any certaine rent, that rent is called Rent ſeruice.

Alſo in ſuch tenures in ſocage, if the tenant haue iſſue and die, his iſſue being within the age of 14 yeares, then the next friend of that heire to whom the heritage may not deſcend, ſhall haue the ward of the land, & of the heire vnto the age of the heire of 14 yeres, and ſuch warden is called warden in Socage. For if land deſcend to the heire by the fathers ſide, then the mother, or ſome other nigh coſin of the mothers ſide ſhall haue the ward. And if land deſcend to the heire by the mothers ſide, thē the father or the nert friend of the fathers ſide ſhall haue the ward of ſuch lands or tenements. And when the heire commeth to the age of 14 yeres complete, he may enter & put out his warden in Socage, and occupie the land himſelfe if he will. And ſuch warden in

So-

Socage shall take no issues or profits of such lands or tenements to his owne vse, but onely to the vse and profit of the heire, and of that shall yeeld accompt when it pleaseth the heire, after that the heire hath accomplished the age of fourteene yeres. But such a Warden vpon such accompt shall haue allowance, of all his reasonable costs and expences of all things. And if such a Warden marrie the heire within age of fourteene yeres, he shall make accompt to the heire, or to his executors, of the value of the marriage, though he tooke nothing for the value of the marriage, for that it shal be counted his owne folly, that hee would marrie him without taking the value of the mariage, without hee marrie him to such a marriage that is worth in value as much as the marriage of the heire, &c. Also if any other man that is not a nigh friend, &c occupie the lands and tenements of the heire as Warden in socage, hee shall bee compelled to yeeld accompt vnto the heire, as well as his next friend: For it is no plea for him in a writ of accompt to say that he is not his nigh friend, &c. But hee shall answer whether hee occupieth the Lands or Tenements as Warden in Socage, or not. But inquire if after that the heire hath accomplished the age of fourteen yeares, and the Warden in Socage continually occupieth the land, till the heire commeth to full age of 21. yeares. If the heire at his full age shall haue an Action of Accompt against the

warden for the time that hee hath occupied after the said fourteene yeares, as against his warden in socage, or against him as against his baylife.

Also if warden in chiualry make his executors, and die, the heire being within age, &c. The executors shal haue the ward, during the nonage. But if the warden in Socage make executors and die, the heire being within the age of fourteene yeares, his executors shall not haue the ward, but another nigh friend to whom the heritage may not descend, shall haue the ward. And the cause of diuersitie is, for that the warden in Chiualrie hath the ward to his proper vse, and the warden in Socage hath not the ward to his owne vse, but to the vse of the heire. And in such case, where the warden in socage dieth before any such accompt made by him, the heire is of that without remedie, for that no writ of accompt lyeth against the executors, but onely for the king.

Also the Lord of whom the Land is holden in Socage after the death of his tenant, shall haue relefe in such forme. If the Tenaunt hold by Fealtie, and certaine Rent to pay yearely, &c. If the termes of payment bee to pay by two termes of the yeare, or by foure termes of the yeare, the Lord shall haue of the heire of his Tenaunt, as much as the rent amounteth that hee should pay by yeare. As if the Tenaunt held of the

Lord

Lord by Fealty, and x. shillings of rent, payable at certaine termes of the yeare, then the heire shall pay to the lord x.s. for reliefe aboue ten shillings that hee shall pay for the rent. Looke more in the Statute of Ann. 19. Hen. 7. cap 15.

And in such case after the death of the tenant, such reliefe is due to the Lord incontinent, of what age soeuer the heire be, for that such a Lord may not haue the ward of the bodie nor the land of the heire. And the Lord in such case ought not to abide the paymēt of his reliefe, after the termes & dayes of payment of the rent, but he ought to haue his reliefe incontinent: And therefore he may incontinent distraine after the death of his tenant for the reliefe.

In the same maner it is, where a tenāt holdeth of his Lord by Fealty, and by a pound of Comin, or a pound of Pepper by the yeare, & the Tenant die, the lord shall haue for his reliefe a pound of Comin, or a pound of pepper.

In the same maner it is, where the tenant holdeth to pay by the yere a certain number of Capōs or Hens, or a paire of Gloues, or certaine bushels of wheat, and such other maner things. But in some case the Lord ought to abide to distraine for his reliefe till a certaine time. As if the Tenant hold of his Lord by a rose, or by a bushell of roses, to pay at the feast of S. John Baptist. If such a tenant die in Winter, then the Lord may not distraine for

his relefe, &c. vntill the time that the roses by the course of the yeare may haue their growings, &c. Et sic de similibus.

Also if any peraduenture will aske why a man may hold of his Lord by Fealty onely for all maner of seruices, insomuch, that when the tenant shall make his fealty, he shal sweare to his Lord that he shall do all seruices due, & when he hath made Fealty in such case, there is none other seruice due: To this it may be said, that where the tenant holdeth his land of his Lord, it behoueth that he ought to doe to his lord some maner of seruice, for if the Tenant nor his heires ought to doe no maner of seruice to his lord, nor to his heire, thē by long time continued it should be out of remēbrance of whom the land was holden, of the lord, or of his heire, or not, & then more oft & more sooner wil men say, that the land is not holden of the lord nor of his heires, than otherwise: and vpon this the lord shall lose his Escheate of his land, or percase other forfeiture or profit that he might haue of the land: So it is reason that the lord & his heires haue some seruice done vnto him, for a proof, & a witnes that the land is holden of them, and because fealty is incident to all maner tenures, except tenure in frankalmoign, as shalbe said in Frankalmoigne: & because that the lord will not at the beginning of the tenure haue any other seruices but fealty, it is reason that a mā may hold of his lord onely by fealty, and when he hath made

made his Fealty, he hath done all his seruice.

Also if a man let to another for terme of life certaine lands or tenements, without speaking of any thing to yeeld to the lessor, yet he shal do to the lessor Fealty, for that he holdeth of him. And if a lease bee made to a man for terme of yeares, it is said the lesse shall do to the lessor fealty, for that he holdeth of him. And this is proued well by the words in a writ of waste, when the lessor hath cause to bring a writ of waste against him, the which writ shal say, that the lessee holdeth the Tenements of the lessor for terme of yeres: so that writ proueth a tenure betweene them, &c. But he that is tenant at will after the course of the common Law, shall not make Fealty, because he hath no maner of a sure estate. But otherwise it is of tenant after the custome of the manor, because that he is bound to do Fealty to his lord for two causes: One is because of custome, the other is, because that he taketh his estate in such forme to do Fealty.

Frankalmoigne.

TEnant in Franke almoigne is, where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his lord in Franke almoigne: that is to say in Latin in liberam Eleemosynam, that is to say, in free almes. And such tenure began first in old time when a man in old time was seised of lands or tenements in his demesne as of Fee, and of the

the ſame land infeoffed an Abbot and his co-uent, or Prior and his Couent, to haue and to hold to them and their ſucceſſors in pure and perpetuall almes, or in Frank almoigne, or by ſuch words, to hold of the grauntor, or of the leſſor & his heires in Free almes: In ſuch caſe the tenements were holden in Frank almoigne. And in the ſame manner it is, where the Lands or Tenements were graunted in old time to a Deane and Chapter, and to their ſucceſſours, or to a Parſon of a Church, and to his ſucceſſours, or to any other man of holy Church, and to his ſucceſſours in Free almes, if he had capacitie to take ſuch grants or feoffements, &c. And ſuch as hold in Free almes, be boũd of right afore God to do Diſons, Praiers, and Maſſes, and other diuine ſeruices for the ſoules of the grantors or feoffors, or for the ſoules of their heires which be dead, and for the proſperitie & good life of them that be aliue.

And for this they do at no time no manner of Fealty vnto their Lords, for that ſuch diuine ſeruice is better for them before God, than any doing of Fealty. And alſo theſe words, Free almes, or Frākalmoigne, exclude the Lord to haue any worldly or temporal ſeruice, but only to haue diuine and ſpiritual ſeruice to be done for him, &c. And if ſuch that hold their tenements in Free almes, or frank-almoigne will not, or faile to doe ſuch Diuine Seruice as is ſaid, the Lord may not

diſtraine

distraine them for the seruices vndone, &c. because it is not set in certaine, what seruice they ought to doe: but the Lord may of them complaine to their Ordinarie, praying him that hee will set punishment and correction of that: And also to prouide & see that such negligence be no more done: And the Ordinary of right ought to do that, &c.

But where an Abbot or a Prior holdeth of his Lord by certaine diuine seruice in certaine to be done, as for to sing a Masse euery friday in the weeke, for the Soules, &c. or euery yere at such a day to sing Placebo & Dirige, &c. or to find a Chaplein to sing Masse, &c. or to distribute in almes to a hundred poore men, an hundred pence at such a day: in such case, if such diuine seruice be not done, the Lord may distraine, &c. for that this diuine seruice is in certain by their tenure what the Abbot or the Prior ought to do. And in such case the Lord shal haue Fealty, &c. as it seemeth.

And such tenure is not said tenure in Free almes, but it is said tenure by diuine seruice, for in tenure in free almes, or frankalmoigne, no mention is made of any maner certain seruice, for none may hold in free almes or frank almoigne if there bee expressed any maner certaine seruice that he ought to do.

And if it be demaunded, if the Tenaunt in frankmariage shall doe Fealty to the donour or to his heires before the fourth degree bee passed, &c. It seemeth that yea, for hee is not like

like as to this intent to a tenant in free almes or frankalmoigne, for the tenant in free almes shall do (because of his tenure) diuine seruice for the Lord, as it is aforesaid, and that hee is charged to do by the law of holy Church, and for that he is excused and discharged of Fealty. But tenant in Frankmariage doth not by his tenure such seruice.

And if he do not to his lord Fealty, then he doth not to his Lord any manner of seruice neither spirituall nor temporall, which should be an inconuenience and against reason, that a man should haue estate of inheritance of another, and yet the lord shal haue no maner of seruice of him as it seemeth, and so it seemeth that he shall doe Fealty to his Lord vntill the fourth degree be past, &c. And when he hath done fealty, he hath done all his seruice. And if an Abbot hold of his lord in free almes, and the Abbot and his Conuent vnder their common seale alien the same land to a seculer man in fee simple, in this case the seculer man shall do Fealty to the lord, for that he may not hold of his Lord in free almes: For if the Lord ought not to hold of him Fealty, then he shall haue of him no maner of seruice which should be an inconuenience, where hee is Lord and the tenements are holden of him.

Also if a man grant at this day to an Abbot or to a Prior, Lands or Tenements in free almes, or Frankealmoigne, these words Free almes or Franke almoigne be void, for that it

it is ordained by the Statute which is called, Quia emptores terrarum, which statute was made Anno 18 Regis E. primi, That no man may alien or grant lands or tenements in Fee simple to hold of himselfe, so that if a man be seised of certain lands or tenements which he holdeth of his Lord by knights seruice, and at this day he granteth the same land to an Abbot, &c. in free almes, or Frankalmoigne, the Abbot shall hold immediatly the same Tenements by Knights seruice of the Lord of his grantor, because of the same estatute: so that no man may hold in free almes, or in Franke almoigne, but if it be by title of prescription, or by force of a grant made to some of his predecessors before the same Estatute: But the King may giue lands or Tenements in Fee simple to hold in free almes or frankalmoigne, or by other seruice, for he is out of the case of the statute. And note well, that no man may hold Lands or Tenements in free almes, but of the graunter or his heires, and that for the priuitie of the gift: and therfore it is said, that if there be Lord, Meine, and Tenant, and the tenant is an Abbot that holdeth of his Meine in frankalmoigne, if the Meine die without heire, then the meinaltie shall come by escheat to the said Lord aboue, & the Abbot then shall hold of him immediatly onely by fealtie, and shall do him fealty, for that he may not hold of him in Frankalmoigne, &c.

And note well, where that such a man of reli-

religion holdeth his lands of his Lord in free almes, &c. his Lord is bound by the law to acquite him of euery maner of seruice ỹ any lord aboue him will demand or aske of the same tenãts. And if he acquite him not, but suffer him to be distrained, &c. then he shall haue against his lord a writ of Meine, and recouer his damages and costs of his suit.

Homage auncestrell.

TEnure by Homage Auncestrel is, where a tenant holdeth his land of his Lord by homage, and the same tenant and his ancesters whose heire hee is, haue held the same land of the said Lord, and of his Auncesters, whose heire the lord is, from time out of mind by homage, & haue done homage vnto him: which is called Homage auncestrell, because of the continuance which hath been by title of prescription in the tenancie, in the blood of the tenant, & also in the lordship in the blood of the Lord. And such seruice by homage ancestrell draweth to it warrantie: if the Lord that is aliue hath receiued Homage of such Tenaunt, hee ought to warrant his tenant when he is impleaded of the lands holden of him by homage Auncestrell. And all such seruice by homage Auncestrell draweth to it acquitance, that is to say, the Lord ought to acquite his Tenaunt against all other Lords aboue him of euery manner of seruice. And it is said, that if such tenant bee impleaded by a Præcipe quod red-

reddat, &c. and he voucheth his Lord to warrantie, which commeth in by processe, and asketh the Tenaunt what hee hath to bind him to warrantie, and he sheweth how he and his ancesters, whose heire he is, haue holden the land of the Vouchee and of his Auncesters, whose heire hee is, by Homage from time out of mind: if the Lord which is vouched receiued none homage of the tenant, nor of any of his Auncesters, the Lord then, if he will, may disclaime in the Lordship, and so put out his Tenaunt of his warrantie. But if the Lord which is vouched hath receiued homage of the Tenant, or of any of his ancestors, then may he not disclaime, but he is bound by the law to warrant the tenant, & then if the tenant leese the land in default of ỳ vouchee, he shal recouer in value agaīst the vouchee of the lands or tenements that the vouchee had at the time of the voucher, or any time after.

And it is to wit, that in euery case where the Lord may disclaime in his lordship by the Law, in court of Record, and of that will disclaime, his seigniory is extinct, and the tenant shal hold of the lord next aboue his lord which so disclaimeth. But if an Abbot or Prior bee vouched by force of Homage Auncestrell, &c. though he haue neuer taken Homage, &c. yet he cannot disclaime in this case, nor in none other case, for they cannot deuest that thing in Fee, which hath beene vested in their house, Paschæ 10. E. 4.

Also

Also if a man that holdeth his land by homage auncestrell alieneth his land to another in fee, the alienee shall do homage to his Lord: But hee holdeth not of his Lord by Homage auncestrell, for that the tenancie was not continued in the blood of his ancestors of the alienee, nor the alienee shall neuer haue the warranty of his land of the Lord, for that the continuance of the tenancie in the tenant & in his blood by the alienation is discontinued. And so see, that if the Tenaunt that holdeth his land by Homage auncestrell of the Lord, and such a Tenant alieneth in fee, though that he take estate of the alienee againe in fee, hee holdeth the land by Homage, but not by homage auncestrell.

Also it is said, that if a man hold his Land of his Lord by homage and fealty, and he hath made homage and fealty to his Lord, and the Lord hath issue a sonne and dyeth, and the lordship descendeth to his sonne: In this case the Tenant which did Homage to the father, shall not doe Homage to his sonne, for that when a tenant hath made once homage to his Lord, hee is excused for terme of his life to make homage to any other heire of the Lord: But yet he shall do fealty to the sonne & heire of his Lord, though that he made fealty to his father.

Also if the Lord after the Homage to him made by his Tenant, grant the seruice of his Tenant by deed vnto another in Fee, and the te-

Tenant attorneth, &c. the Tenant shal not be compelled to do homage, but he shall do fealty, though hee did fealtie before to the graunton, for Fealtie is incident to euery attornement, when the lordship is graunted. But if a man be seised of a Manor, and another man holdeth his land of him as of the Manor aforesaid by homage, the which hath done homage to his lord which is seised of the manor, if after that a stranger bring a Præcipe quod reddat against the Lord of the manor, and recouereth the Mannor against him, and sueth execution &c. in this case the tenant shall once againe do homage to him that recouereth the manor, for that the estate of him which receiued homage before is defeated by the recouery. And it shal not lye in the mouth of the tenant to falsifie or defeate the recouerie which was against his Lord. And so see the diuersitie in this case, where a man commeth to his lordship by recouery, and where hee commeth by descent, or grant of the Seigniorie.

And if a Tenaunt which ought by his tenure to doe homage to his Lord, come to his Lord, and say to him, Sir, I owe to doe vnto you homage for the tenements that I hold of you, and I am ready to do you homage for the same tenemẽts, for the which I pray you that you will now receiue it, and if the Lord then refuse to receiue it, then after such refusall the Lord may not distraine the tenant for the homage, before that the Lord require the tenant

to do homage, and the tenant refuse to doe it.

Also a man may hold his land by homage ancestrell, & by Escuage, or by other Knights seruice, as well as hee might hold his land by Homage aunceſtrell in ſocage.

Graund Serieantie.

TEnant by Graund Serieanty is, where a man holdeth his lands or tenements of our soueraign lord the King, by the seruice which he ought to do in his own proper person, as to beare the Kings banner, or his Speare, or to lead his host, or to be his Marshal, or to beare his sword before him at his Coronation, or to be his Sewer at his Coronation, or his Caruer, or Butler, or to be one of his Chamberlaines of his receit of his Exchequer, or to do such seruices, &c. And the cause wherfore such seruice is called Grand serieantie, is for that it is more honorable & worshipfull, and digne, then is the seruice of the tenure by Escuage, for he that holdeth by Escuage, is not limited by his tenure to do any more especiall seruice, then any other that holdeth by Escuage ought to do. But he that holdeth by Grand Serieanty, ought to doe some especiall seruice to the King, that he that holdeth by Escuage ought not to do

Also if the tenant which holdeth by Escuage die, his heire being of full age, if he held by a knights fee, the heire shal pay but an C.s. fee

his

his relieſe, as it is ordained by the ſtatute of Magna charē ca 2. But he that holdeth of the King by Graund ſerieanty, & dieth his heire being of ful age, ſhal pay vnto the king for his relieſe, the value of his lands or tenements by the yere, beſides the charges & reprizes, which he holdeth of the King by Grand ſerieantie. And it is to wit, that Serieantia in Latine is ſeruitium, & ſo Magna ſerieantia, is Magnum ſeruitium, that is to ſay, a great ſeruice

Alſo thoſe which hold by Eſcuage ought to do their ſeruice out of the realme, but they that hold by Grand Serieanty for the moſt part ought to do their ſeruice within the Realme.

And it is ſaid, that in the marches of Scotland ſome hold of the King by Cornage, that is to ſay, to blow an horne for to warne the men of the countrey, &c. when they heare that the Scots or other enemies wil come to enter into England, &c. which ſeruice is grand ſerieanty, &c. But if any tenant hold of any other lord then of the King by ſuch ſeruice of Cornage, that is not Graund ſerieantie, but it is knights ſeruice, and draweth to it ward, marriage & relieſe, for none may hold by Graund ſerieantie, but of the King onely.

Alſo a man may ſee in the 11. yere of Henry the 4. fol. 27. that Cokein then beeing chiefe Baron of the Eſchequer came into the common Place, bringing with him a copy of a Record in theſe words, Talis tenet tantam terram de domino Rege per Serieantiam, ad inueniendū

vnum hominē ad guerram infra quatuor maria, &c. that is to say, Such a man holdeth so much land of our soueraign lord the King by Serieanty, to find one man appointed for the warre within the foure seas, and he demanded whether it was Grand Serieanty, or Petie Serieanty: And Hank then said, that it was Grand Serieanty, for that it was seruice to be done by the body of a man, & if that he may not find a man to doe seruice for him, he must doe it himselfe: to whom the other Iustices assented. Cokaine then said, the tenant in this case shall pay reliefe to the value of the land by yere, to ỹ which was none answer. And note, that all they that hold of the King by Grand serieanty, hold of the King by knights seruice, and the king of that shall haue ward, mariage and reliefe, but the king shall not haue of them Escuage, if they hold not by Escuage.

Petie Serieantie.

TEnaunt by Petie Serieanty is, where a man holdeth his land of our Soueraigne Lord the King, to yeeld vnto him yearely a Bow, a Sword, a Dagger, or a Knife, or a spere, or a paire of gloues of matle, or a paire of spurs gilt, or an arrow, or diuers arrowes, or to yeeld such other small things touching the warre, and such seruice is but Socage in effect, for that that the Tenant by his tenure ought not to goe, nor to doe any thing in his owne

owne proper person touching the war, But to yeild and pay yerely certaine things vnto the king, as a man ought to pay a rent.

And note, that no man holdeth Land by Grand serieanty, nor by Petty serieanty, but of the king.

Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the king is lord, and they that haue tenements within the borough hold of the king their tenements, that euery tenant for his tenement ought to pay to the king a certaine rent by yeare, &c. And such tenure is but tenure in socage. And the same manner is where another Lord spirituall or temporall is Lord of such a borough, and the tenants of the tenements in such a Borough hold of their Lord to pay each of them yearly an annual rent: and it is called tenure in burgage, for that the tenements within the Borough bee holden of the Lord of the Borough by certaine rent, &c. And it is to wit, that the auncient Townes called Boroughes, be the most ancient and eldest townes that be within England, for the Townes that now bee Cities or Counties, in old time were Boroughs, and called Boroughes, for of such old Townes called Boroughs, come the Burgesses of the Parliament, to the Parliament, when the K. hath summoned his Parliament

Also for the greater part, such Boroughes haue diuers customes and vsages which bee not had in other townes, for some Boroughes haue such a custome, that if a man haue issue many sonnes and dyeth, the yongest son shall inherit all the tenements which were his fathers within the same Borough as heire vnto his father, by force of the custom, the which is called Borough English.

Also in some boroughes by the custome, the wife shal haue for her dower al the tenements which were her husbands.

Also in some Borough by the custome, a man may deuise by his Testament his lands & tenements which he hath in fee simple within the same Borough at the time of his death, and by force of such deuice, he to whom such deuice is made after the death of the deuisor, may enter into the tenements to him deuised, to haue and to hold to him after the forme and effect of the deuise, without any liuery of seisin thereof to be made to him.

Also though a man may not graunt nor giue his tenements to his wife during the couerture, for that that his wife and he be but one person in the Law, yet by such custome he may deuise by his Testament his tenements to his wife, to haue and to hold to her in Fee simple, or in Fee tayle, or for terme of life, or yeres, for that such deuise taketh no effect, but after the death of the deuisor. And if a man at diuers times make diuers Testaments, and

diuers

diuers deuiſes, &c. yet the laſt deuiſe and will made by him, ſhall ſtand and abide.

Alſo by ſuch cuſtome a man may deuiſe by his Teſtament, that his executors may alien and ſel the tenements that he hath in Fee ſimple, for a certaine ſumme, to diſtribute for his almes: In this caſe though the deuiſor die ſeiſed of the Tenements, and the tenements deſcend vnto his heire, yet the executors after the death of the teſtator may ſell the tenements ſo deuiſed, and put out the heire, & thereof make a feoffement, alienation, and eſtate by deed, or without deed, to them to whom the ſale is made vnto.

And ſo may ye ſee a caſe, where a man may make a lawfull eſtate, and yet he hath nought in the tenemẽts at the time of the eſtate made: And the cauſe is for that, that the cuſtome and vſage is ſuch. Quia conſuetudo ex certa cauſa rationabili vſitata, probat communem legem, For a cuſtome vſed vpon a certaine reaſonable cauſe, proueth the common law.

And note well, no cuſtome is to be allowed, but ſuch cuſtome as hath been vſed by title of preſcription, that is to ſay, from time whereof is no mind. But diuers opinions haue beene of time out of mind, & of title of preſcription, which is all one in the law, for ſome men haue ſaid, that the time of mind ſhould be ſaid for time of limitation in a writ of right, that is to ſay, from the time of king Richard the firſt after the Conqueſt, as is giuen by the ſtatute of

Westminster the first, for that a writ of right is the most highest writ in his nature that may be. And in such a writ a man may recouer his right of the possession of his auncesters, of the most ancient time that any man may by any writ by the Law. And in so much that it is giuen by the said Estatute, that in such a writ none shall be heard to aske of the seisin of his auncestours of more longer time, than of the time of King Richard aforesaid, therefore this is prooued, that continuance of possession, or other customes and vsages vsed after the same time is title of prescription, and this is certaine. And other haue said, that wel and trueth it is, that seisin and continuance after the limitation, &c. is a title of prescription, as is aforesaid, and by the cause aforesaid. But they haue said that there is also another title of prescription that was at the common law, before any estatute of limitation of writs &c. And that it was where a Custome or vsage, or other thing hath beene vsed, for time whereof mind of man runneth not to the contrary: And they haue said that this is proued by the pleading: where a man will plead a title of prescription of custome, &c. he shal say that such custome hath beene vsed from time whereof the memory of men runneth not to the contrary, that is as much to say, when such a matter is pleded, that no man then aliue hath heard any proofe to the contrary, nor hath no knowledge to the contrarie, & in so much that

such

such title of prescription was at the Common Law, and not put out by an estatute, Ergo it abideth as it was at the Common Law, and the soner, insomuch that the said limitation of a writ of Right, &c. is of so long time passed Ideo quære de hoc. And many other customes and vsages haue such ancient boroughes.

Also euery borough is a towne, but not the contrary. More shalbe said of customes in the tenure.

Villenage.

TEnure in villenage is most properly when a Villeine holdeth of his Lord (to whom he is villein) certaine lands & tenements after the custome of the Mannor, or else at the will of his lord, & to do his Lord villein seruice, as to beare, bring, and carry out the dung & filth of the Lord vnto the land of the lord, there to lay it, cast it, & spread it abroad vpon the land, and to do such other manner of seruice. And some free tenants hold their tenements after the custome of certain manors by such seruice, and their tenure is called tenure in villenage, and yet they be no villeines, for no Land holden by Villenage, or villein lands, or any custome arising of the land, shall euer haue a free man Villeine: But a villeine may make a free land to be villein land vnto his Lord. As if a villeine purchase land in fee simple, or in fee taile, the lord of the villeine may enter into the land, & put out the villeins and his heires for euer,

euer, and after the Lord (if he wil) may let the same land to the villeine, to hold in villenage.

Also if a Feoffement be made to a certaine person or persons in fee, to the vse of a villein, or if a Villeine with other persons be enfeoffed to the vse of a Villeine, what estate soeuer the villeine hath in the vse, in fee taile, for term of life, or yeares, the Lord of the Villein may enter in all those lands and tenements, likewise as if the Villein had beene alone seised of the demesne: And that is by the Statute of Ann 19.H.7 ca.15. But if a free man wil take any lands or tenements of his Lord by such Villeine service, that is to say, to pay a fine to his Lord for his marriage, or for the marriage of his sonne, or his daughter, then shal he pay such a fine for the mariage, &c. for that it is the follie of such a free man, to take in such forme lands or Tenements to hold of his Lord by such bondage, yet that maketh not the free mã Villeine.

Also, euery villeine, either he is villeine by prescription, that is to say, he and his auncesters haue been villeines time out of mind, or he is villein by his owne confession in Court of Record. But if a free man haue diuers issues, and after confesseth himselfe to be villein to another in Court of Record, yet his issues which he hath before the confession be free, but the issues which he shal haue after the confession, &c. shalbe Villeines.

Also if a villeine purchase lands and alieneth

ueth the same lands to another before his lord enter, then the Lord may not enter, for it shall be iudged his owne folly that hee entred not when the land was in the Villeines hands. And so it is of his other goods, for if the Villeine buy and sell, or giue goods to another before that the lord seise the goods, then the lord may not seise them. But if the lord before any such sale or gift commeth within the house of the villein where such goods be, & there openly among the neighbors claime the same goods to be his, and so seise parcell of the same in name of seisin of all his goods, &c. this is said a good seisin in the law. And the occupation that the villein hath after such claime in the goods, shal be taken in the Law, in the right of the Lord. But if the King haue any villeine that purchaseth lands, & alieneth before that the King enter, yet the King may enter in the land in whose hands soeuer the land commeth: or if the villein buy or sell diuers goods before that the King seise the goods, yet the King may seise them in whose hands soeuer they be, quia nullum tempus occurrit Regi, for no time runneth against the King.

Also if a man let Land to another for terme of life, sauing the reuersion to him, and a villeine purchaseth of the lessour the reuersion, in this case it seemeth that the Lord of the Villeine may incontinent come to the Land, and claime the same reuersion as Lord of the same Villeine, and by this clayme, the

the reuersion is incontinent in him, for in any other forme hee may not come to the reuersion, for he may not enter vpon the tenant for term of life: And if he ought to attend till after the death of the tenant for terme of life, then happely he might come too late, for peraduenture the Villeine will graunt or alien to another in the life of the tenant for terme of life. In the same maner it is where a villeine purchaseth the Aduowson of a Church full of an incumbent, that the Lord of the villeine may come to the said Church and claime the Aduowson. And by this claime the Aduowson is in him, for if he abide till after the death of the incumbent, and then present his Clerke to the said Church: Then in the meane time the villeine might alien the Aduowson, &c. and so put out the Lord from his presentation.

Also there is a villeine regardant and a villeine in grosse. Villeine regardant is as if a man be seised of a Manour, to which a villein is regardant, and he that is seised of the said Manour, or they whose estate he hath in the same Manour haue been seised of the said villeine and of his auncestors as villeins regardant to the Manour from time out of mind. And villeine in grosse is where a man is seised of a manour, to the which a villein is regardant, and granteth the same villeine by his deed vnto another, then he is villeine in grosse, and not regardant.

Also if a man and his auncestours whose

heire

heire he is, haue been seised of a Villeine, and of his Auncestors, as villeines in grosse time out of mind, such beene Villeines in grosse. And note well, that of such things which may not bee graunted nor alienes without Deed or Fine, a man that will haue such things by prescription may not otherwise prescribe but in him, and his Auncestors whose heire he is, and not by these words, in him and whose estate hee hath, for that that hee may not haue their estate without deede or writing, the which behoueth to be shewed to the Court, if hee will haue any aduantage of this: and because that the graunt and the alienation of a Villeine lyeth not without deed or other writing, a man may not prescribe in a villein in grosse without shewing of writing, but in himselfe that claymeth the Villeine, and in his ancestors whose heire he is. But of those things which bee regardant or appendant to a Mannour, or to other lands or Tenements, a man may prescribe that hee and they whose estate hee hath were seised of the Mannor, or such Lands or Tenements, as regardants or appendants to the Mannour, or to such lands or tenements, &c. from time out of mind: and the cause is for this, that such a Mannour, Lands and tenements, may passe by Alienation without deed, &c. And it is to wit, that nothing is named regardant to a Mannour but a Villeine. But certaine other things, as Aduowsons and

Com-

Common of pasture, &c. be named appendants to the Mannor, or to other Land and Tenements.

Also if a man in Court of Record knowledge himselfe to bee villeine that neuer was villeine before, such a one is villeine in grosse.

Also, a man that is villeine, is called Villeine, and a woman that is villeine is called Nieſe. And a man that is outlawed is called an Outlaw, and a woman that is outlawed is called a Waife.

Also if a villein take a free woman to wife, the issue between them shall be villeine. But if a Nieſe take a free man to husband, their issue shalbe free. And that is contrary to the Law Ciuill, for there is said, That partus sequitur ventrem.

Also no Bastard may bee Villeine, but if that hee will knowledge himselfe to bee Villeine in Court of Record, for hee is in the Law, quasi nullius filius, as the sonne of no man.

Also euery villein is able and free to sue all maner of actions against euery person, except against his Lord to whom he is villeine: and yet in certaine things hee may haue against his lord an action, as of appeale for the death of his father, or of his other ancestors whose heire he is. Also a Nieſe which is rauished by her Lord may haue Appeale of Rape against him.

Also

Also if a Villeine be made executor to another, and the Lord of the Villeine was indebted to the testator in a certaine summe of money, the which is not payed: In this case the villeine as executor to the testator, shall haue an action of debt against his Lord, because he shal not recouer the debt to his proper vse, but to the vse of the testator.

Also the Lord may not take out of the possession of such a villeine, that is Executor, the deads goods, and if hee doe, the Villeine as Executor shall haue an action of Trespas against his Lord for the same goods so taken, and recouer damages to the vse of the testator. But in all these cases it behooueth the Lord (which is defendant in such actions) to make protestation that the plaintife is his villein, or else the villein shalbe infranchised, though the matter be found for the Lord against the villeine, as it is said.

Also, if a villeine sue an action of Trespas, or other action against his Lord in one shire, and the Lord saith, that hee shall not bee answered, for that he is villeine regardaunt to his Mannour in another Shire, and the plaintife saith, that hee is franke and of free estate, and no Villeine, this shall bee tried in the Shire where the plaintife hath conceiued his Action, and not in the Shire where the Mannor is, and this is in fauour of libertie, and it is adiudged Mich. 40. Edward the third.

And

And for this cause was made a statute in the ninth yeare of Richard the second, the tenour of which insueth in such forme.

Also for that, where many Villeines and Nefes, as well of great Lords as of other folke spirituall and temporall, flie and go into Cities and places franchised, as the Citie of London, and other like places, and faine diuers suits against their Lords, because they would make themselues to be infranchised, it is accorded and assented that the Lords, nor none other shalbe forebarred of their villeines, because of their answer in the law. By force of which statute, if any villein will sue any maner of action to his owne vse in any Shire where it is hard to trie &c. against his Lord, his Lord may chuse to plead that the plaintife is his villeine, or to make protestation that he is his villeine, and to plead another matter in barre, & if they be at issue, & the issue be found for the Lord, then the Villeine, is Villeine as he was before, by force of the same statute: but if the issue be found for the villeine, then is the villeine franke and free, for that the Lord tooke not for his plee, that the villeine was his villeine, but tooke it by protestation.

Also the Lord may not mayme his Villeine, for if hee mayme his Villeine, he shall of that be indicted at the Kings suit. And if hee be of that attainted, he shal for that make grieuous Fine and ransome to the King. But it seemeth that the villeine shall not haue by the law

law any appeale of Maime against his lord, for in appeale of Maime a man shall not recouer but his damages. And if the Villeine in that case recouer damages against his Lord, and hath thereof execution, the Lord may take that that the Villeine hath in execution from the Villeine, and so the recouerie standeth void.

Also if the villeine be demandant in an action reall, or plaintife in an action personall against his Lord, if the Lord will plead in disability of his person, he may not make plaine defence, but hee shall defend but the wrong & the force, and demaund Judgement if he shall be answered, and shew his matter by and by how he is Villeine, and demand Judgement if he shall be answered.

Also, fiue manner of men there bee against whom if they sue actions, &c. Judgement may be asked if they shall bee answered: One is, where the villeine sueth an action, &c. against his Lord, as in case aforesaid. The second is, where a man is outlawed vpon an Action of debt or trespas, or vpon any other action or indictment, the Tenaunt, or the Defendant may shew all the matter of the Record and the outlawrie, and demand iudgemrnt if he shall bee answered, because that he is out of the law to sue an action during the time that hee is outlawed. The third is, where an alien borne out of the allegeance of our Soueraign Lord the King, if such alien sue an Action reall or

perſonal, the tenant or defendant may ſay, that he was borne out of the Kings allegeance, & aſke iudgement if he ſhall be anſwered. The fourth is, where a man by iudgement given againſt him vpon a writ of Præmunire facias, &c. is out of the kings protection, if he ſue any action, & the tenant or defendant ſhew all the Record againſt him, he may aſke iudgement if he ſhalbe anſwered, for the Law & the Kings writs bee the things by which a man is protected and holden, and ſo during the time that a man in ſuch caſe is out of the kings protection, he is out of helpe and protection by the Kings Law, or by the Kings writ. The fifth is, where a man is entred and profeſſed into Religion, if ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the Order of Saint Benet, and is there a Monke profeſſed, or in the Order of Friers Minors or Preachers, and is there a Frier profeſſed, & ſo of other orders of Religion, &c. and aſke iudgement if he ſhalbe anſwered, and the cauſe is this, that when a man entreth into Religion, and is profeſſed, he is dead in the Law, and his ſonne or next coſin incontinent ſhall inherit him, as well as though he were dead indeed, & when he entreth into Religion, he may make his Teſtament & his executors, & they may haue an action of debt due to him before his entry into religion, or any other action that executors may haue, if he were dead

in

in deed. And if he make none executors when he entreth into Religion, then the Ordinary may commit the Administration of his goods to other, as if he were dead in deed. The sixth is, where a man is accursed by the law of holy Church, and he sueth his action reall or personall, the tenant or defendant may plead that he that sueth is accursed, & of this it behoueth him to shew the Bishops Letters vnder his seale, witnessing the accursing, & aske iudgement if he shalbe answered, &c. but in this case if the demaundant or plaintife cannot deny it, the writ shall not abate, but the iudgemēt shal be, that the tenant or defendant shall go quite without day, for this, that whē the demandāt or plaintife hath purchased his letters of absolution, and shewed them to the Court, he may haue a resummons or a reattachmēt vpon his originall, after the nature of his writ, &c. But in the other cases the writ shal abate, &c. if the matter shewed may not be gainsaid.

Also, if a villeine be made a secular Priest, yet his Lord may seise him as his villein, and seise his goods, &c. But it seemeth, that if the villeine enter into religion, and is professed, &c. thāt the Lord may not take him, nor seise him, for that he is dead in the law. And no more then if a Free man take a Niefe to his wife, the Lord may not take nor seise the wife of the husband: But his remedie is to haue an Action against the husband, for that hee tooke his Niefe to wife without his will,

& so may the lord haue an action against the Soueraign of the house that taketh & admitteth his villein to be professed in ỳ same house without licence and will of his Lord, &c. and shall recouer his damages to the value of the villein: for he that is professed Monke, &c. shall be a Monke, & as a Monke shal be taken for terme of his life naturall, except he be deraigned by the Law of the holy Church, and he is holden by his religion to keepe his cloister, & if the Lord may take him out of the house, then he should not liue as a dead person, nor alter his religion, which should be inconuenient &c. For if there be warden in Chiualry of bodie and Lands of a child within age, if the child when he comes to the age of 14. yeares enter into Religion & is professed, the warden hath none other remedy, as to the ward of the body, but a writ of Rauishment of ward against the soueraigne of the house. And if any being of full age, that is cosin & heire vnto the child, enter into the land, the warden hath no remedy as to the ward of the land, because that the entry of the heire of the child is lawful in such case.

Also in many other cases the Lord may make Manumission and infranchising to his villeine. Manumission is properly when the Lord maketh his deed to his villein to infranchise him by this word Manumittere, which is as much to say, as extra manum, & extra potestatem alterius ponere, as to put him out

of

of the hands and the power of another. And for this that by such a deed the villein is put out of the hand and power of his Lord, it is called Manumission. And so every maner of infranchising made to a villeine, may be said a Manumission. Also if the Lord make to the villeine an Obligation for a certaine summe of money, or graunt vnto him by his deed an annuitie, or let him by his deed, lands or tenements for terme of yeares, the villeine is infranchised. And if the Lord make a Feoffement to his villeine of any Lands or Tenements by deed, or without deed, in Fee simple, or fee taile, or for terme of yeares, and deliuereth vnto him the seisin, this is an infranchising: But if the Lord make to him a Lease of Lands and Tenements to hold at the will of the Lord, by deed, or without deed, this is no infranchising, for that he hath no maner of certainty nor surety of his estate, but that the Lord may put him out when he will. Also, if a Lord sue against his Villeine a Præcipe quod reddat, if he recouer, or be nonsuit after apparance, this is manumission, for this that he may lawfully enter into the land without such suit. In the same manner it is if he sue against his Villeine an action of Debt, or of Accompt, or of Couenant, or of Trespasse, or such other, this is an Infranchising, &c. For this that he may imprison his villeine, & take his goods without such suit. But if the Lord sue his villein by Appeale of Felonie, this is

none infranchising to the villeine, though the matter of the appeal is found against his lord, because that the lord may not haue the villeine hanged without such suit. But if the villeine were not indicted of the same felonie before the appeale sued against him, & is acquited of the felony, so that he recouer damages against the lord for the false appeale: then in this case the villein is infranchised, because of the iudgement of damages that was giuen to him against his Lord. And more cases and matters there be by the which a villein may be infranchised against his lord, Sed de illis quære Also if a lord of a Mannor will prescribe that it hath bin accustomed within his mannor, time out of mind, that euery tenãt within the same manor that marieth his daughter to any man without licence of the Lord of the manor, shal make fine to the Lord for the time being, this prescription is void, for none ought to make such fines but only villeines, for euery free mã may freely marry his daughter to whom it pleaseth him and his daughter. And because that this prescription is against reason, such prescription is void But in the shire of Kent of lands holden in Gauelkind, where by the custome vsed time out of mind, the children males ought euenly to inherit, this custome is allowable, for this that it is with some reasõ, because that euery sonne is as great a gentleman as the elder son, and because of that, more great honour and valure shall grow, then if he

he had nothing by his auncestors, where peradventure he might not so grow, &c.

Also, where by the custome called Borough English, in some Borough the yongest sonne shal inherit all the tenements, &c. this custome also standeth with reason, because that the yonger son if he lacke father and mother, (because of his yong age may least of all his brethren helpe himselfe, &c. But if a man will prescribe, that if any cattell were vpon the demeans of the manor, there doing damage, that the Lord of the manor for the time being hath vsed to distraine them, and the distresse to retaine till fine were made to him for the damages at his will, this prescription is void. because it is against reasō, that if wrong be done any man, that he thereof should bee his owne Iudge, for by such way if he had damages but to the value of an halfepennie, he might assesse and haue therefore an C.l. which should be against all reason. And so such prescription, or any other prescription vsed, if it be against all reason, this ought not, nor will not be allowed before Iustices, Quia malus vsus abolēdus est.

Rents.

THree manner of Rents there be, that is to say, Rent seruice, Rent charge, and Rent secke. Rent seruice is, where a man holdeth his land of his Lord by fealty, & certaine rent, or by other seruice, and certaine rent, or by homage, fealty, and certaine rent, and if rent

ſeruice at any day that it ought to be paied, be behind, the Lord may diſtraine for that of cõmon right. And if a man now will giue lands or tenements to another in the tayle, yeelding to him certaine rent by the yeare, hee of common right may diſtraine for the rent behind, though that ſuch gift was made without deed, becauſe that ſuch rent is rent ſeruice: But in ſuch caſe where a man vpon ſuch a gift, or leaſe, will reſerue to him rent ſeruice, it behoueth that the reuerſion of the lands and tenements be in the donor, or in the leſſor: for if a man will make a feoffement in fee, or will giue Lands in the taile, the remainder ouer in Fee ſimple, without a deede, reſeruing to him certaine rent, ſuch reſeruing is void, becauſe that no reuerſion is in the Donour, and ſuch a tenant holdeth his land immediatly of the Lord of whom his donor held. And this is by force of the ſtatute of Weſtm the 3. cap. 1. Quia emptores terrarum. For before the ſame ſtatute, if one made a feoffement in Fee ſimple by deed, or without deed, yeelding to him, or to his heires certaine rent, this was rent ſeruice, and for this he might diſtraine of common right: And if he made no reſeruation of any rent, nor of any ſeruice, yet the feoffee held of the feoffor by ſuch ſeruice, as the feoffor held ouer of his Lord next aboue. But if a man by deed indented at this day, make ſuch a gift in the taile, the remainder ouer in Fee, &c. or feoffement in fee, and by the ſame Inden-

denture reserueth to him and to his heires a certaine rent, and that if the rent be behind, that it shalbe lawfull to him and to his heires to distraine, &c. such rent is rent charge, because such lands and tenements be charged of such distresse by force of the writing onely, & not of common right. And if such a man in such a deed indented, reserue to him and to his heires certaine rent, without any such clause set or put in the deed, that he may distraine, &c. that such rent is rent secke, because that hee cannot distrain to haue the rent if it be denied by the same distresse, and if he were neuer seised in this case of the rent, hee is without remedy, as it shalbe said hereafter.

Also if a man seised of certaine land, grant by his deed Pol, or by Indēture, a yerely rent issuing out of the same Land to another in fee simple, or in fee taile, or for terme of life, &c. with clause of distresse, &c. then that is rent charge, and if it be without clause of distresse, then it is rent secke. And not well, that rent secke, idem est quod redditus siccus, because that no distresse is incident to it.

Also if a man grant by his deed rent charge to another, and the rent is behind, the grantee may chuse if he will sue a writ of annuity of it against the grantor, or distraine for the rent behind, and the distresse to withhold till he bee of that paid: But he may not do and haue both together, for if he take a writ of annuity, then the land is discharged, and if he sue not a writ

of

of annuitie, but distraine for the arrerages, & the tenant sueth a Replegiare, &c and the grãtes auoweth the taking of the distresse in the Land, &c. in Court of Record, then is the lãd charged, and the person of the grantor discharged of an action of Annuitie.

Also, if a man will that another shall haue a rent charge issuing out of his lands, but he will not that his person shalbe charged in any manner by a writ of Annuity, then hee may haue such clause in the end of his deed, Prouiso semper quod præsens scriptum, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam per breue de Annuali redditu, Sed tantummodo ad onerandũ terra & tenementa prædicta, de Annuali redditu prædict' and then is the land charged, & the person of the grantor discharged.

Also, if a man make such a deed in such maner, that if A. of B. be not yearly payed at the Feast of Christmasse for terme of life, xx.s. of lawful mony, that then it shalbe lawful to the said A. of B. to distraine for it in the manor of F. &c. this is a good rent charge, because that the manor is charged of the rent by way of distresse: and yet the person himselfe that made such a deed is discharged in this case of an action of annuity, because that he granted not by his deed any annuity to the said A. of B. but grãted only ỹ he may distrain for his annuity.

Also, if a man haue a rent charge to him and to his heires, issuing out of certaine land,

if

if he purchase any parcell of the Land to him and to his heires, all the rent is extinct and adnulled, because that rent charge may not in such maner be apportioned: but if a man that hath rent seruice purchase parcell of the land whereof the rent is, this shall not extinct all, but for the portion, for that rent seruice in such case may be apportioned, and shall bee apportioned after the value of the Land: But if a Tenaunt hold his Land by seruice to yeeld to his Lord yearly at such a feast an Horse, or an Hawke, or such thing semblable, if in such case the Lord purchase parcell of the land, the seruice is gone, because that such seruice may not be seuered nor apportioned. But if a man hold his land of another by Homage, fealty, and escuage, and by certaine rent, if the Lord purchase parcell of the Land, &c. in that the rent shall be apportioned, as is aforesaid, but yet in this case the homage and fealty abideth whole to the Lord, for the Lord shall haue the homage and fealty of his Tenant for the remnant of Lands and tenements holden of him as he had before, &c. for this that such seruices be not annuall seruices, and may not bee apportioned: But the escuage may and shall be apportioned after the quantitie and rate of the land.

Also if a man haue a rent charge, and his father purchaseth parcel of the tenements charged in the fee, and dieth, & that parcell descendeth to his son that hath the rent charge, now this

this rent charge shal be apportioned after the value of the Land, as is aforesaid of rent seruice, because that such a portion of the Land purchased by the father, commeth not to the sonne by his owne deed, but by descent and course of the Law.

Also if there be Lord and Tenant, and the tenant holdeth of his Lord by fealty and certaine rent, and the Lord granteth the rent by his deed to another, &c. reseruing to him the fealty, and the tenant attourneth to the grantee of the rent, now such rent is rent secke to the grantee, for this that the tenements be not holden of the grantee of the rent, but bee holden of the Lord that reserued to him fealtie. And in the same maner it is where a man holdeth his land by homage, fealty, and certaine rent, if the Lord grant the rent, sauing to him the homage, such rent after such grant is rent secke. But where Lands or Tenements bin holden by homage, fealty, and certaine rent, if the Lord will grant the homage of his land by his deed to another, sauing to him the remnant of the seruices, and the tenant attourneth to him after the forme of the graunt, now in this case the Tenant holdeth his land of the grantee: and the Lord that graunteth the homage, shal not haue but the rent as rent seck, and shall neuer distraine for the rent: for this, that neither homage, nor fealty, nor escuage, may be said secke, for hee that hath or ought to haue of his tenant homage, or fealtie, or

escuage,

escuage, may of common right distraine for it if it be behind, for homage, fealty, and escuage been services by which lands and tenements be holden, & been such that in no maner may be taken but as services. But otherwise it is of rent that was once rent service, for this that when it is severed, &c. by the grant of the lord from the other services, it may not be said rent service, for this, that it hath not to it fealtie which is incident to every maner of rent service, and for this it is said rent secke.

Also if a man let Land to another for terme of life, reserving to him certaine rent, if he graunt the rent to another, saving to him the reuersion of the Land so letten by his deed, &c. such rent is but rent secke, for this that the grauntee hath nothing in the reuersion of the land. But if he grant the reuersion of the land to another for terme of life, and the tenant attourneth, &c. then hath the grauntee the rent as rent service, because he hath the reuersion for terme of life. And so it is to be vnderstood that if a man giue Lands or Tenements in the tayle, reseruing to him and to his heires certaine land, or let land for terme of life, reserving certaine rent, if he graunt the reuersion to another, and the Tenant attourneth, all the rent and service passeth by the word of the graunt of reuersion, for this that all the rent and service in such case bee incidents to the reuersion, and passe by the grant of reuersion. But though he graunt the rent to another,

the

the reuerſion palleth not by ſuch graunt, &c. And ſo note well the diuerſitie. And ſo it is holden Paſchæ 12. E. 4. f 3. But it is adiudged Añ 26. Lib. Aſſ pl 38 39 whereas the ſeruices of the tenant in taile were graunted, that that was a good graunt, yet notwithſtanding the reuerſion remaines.

Alſo if there be Lord, Meſne, & Tenaunt, and the Tenant holdeth of the Meſne by the rent of fiue ſhillings, and the Meſne holdeth ouer by 12. pence, if the Lord aboue purchaſe the tenancy in fee, then the ſeruice of the Meſnalty is extinct, for this, that when the Lord aboue hath the tenancy, he holdeth of the Lord next aboue him. And if hee ought to hold it of him that was meſne, then he ſhould hold ouerſelfe tenauncie immediatly of diuerſe Lords, which ſhould bee inconuenient, and the Law will ſooner ſuffer a miſchiefe then an inconuenience, and for this the ſeigniory of the meſnalty is extinct. But inſomuch that the tenant held of the meſne by fiue ſhillings, & the meſne held but by 12. pence, ſo that he had more aduantage by 4. ſhillings, then he payed to his Lord, he ſhall haue the ſaid 4. ſhillings as rent ſecke yearely of the Lord that purchaſed the tenancie.

Alſo, if a man that hath Rent ſecke, is once ſeiſed of any parcell of the Rent, and after if the Tenaunt will not pay the Rent that is behind, this is his remedie: It behoueth him to goe by himſelfe, or by another, to

to the lands and tenements, whereof the rent is issuing, and there to demand the arrerages of the rent. And if the tenant deny to pay it, this denying is a disseisin of the rent. Also, if the tenant at the time be not ready to pay it, this is a denying and a disseisin. Also, if the Tenant, nor none other be dwelling vpon the lands or tenements when he asketh the arrerages, &c. this is a denying in law, and a disseisin in deed, and of such disseisines hee may haue an Action of Nouel disseisin against the tenant, & recouer the seisin of the rent, and the arrerages, and his damages and costs of his writ, and of his plee, &c. And if after such recouery the rent be another time denied him, then he shall haue a Redisseisin, and recouer double damages.

And it is to be had in mind, that this name Assise, is Equiuocum, for sometime it is taken for a Iurie, for in the beginning of the record of Assise of Nouel disseisin, the record shall begin thus, (Assisa venit recogn') which is to say, that Iuratores ven recogn', and the cause is for this, that by the writ of Assise is commanded to the Shrife, Quod faciat xij. liberos & legales homines de vicinero, &c videre tentum illud, & nomina eorum imbreuiare, & quod summon eos per bonos summon' quod sint coram Iusticiarijs, &c. parat inde facere recognitionem, &c. And for this, that by force of such an originall writ, a Panell by force of the same writ ought to be returned, &c. it is

said

ſaid in the beginning of the Record in Aſſiſe, Aſſiſa venit recogn̄, &c. Alſo in a writ of right it is commonly ſaid, that the tenant may put him in God, and in the great Aſſiſe, &c. Alſo there is a writ in the Regiſter called, De magna Aſſiſa eligenda: ſo is this a good proofe that this name Aſſiſe is ſometime put for the Jury, and ſometime it is taken for all the writ of Aſſiſe, & after that intent it is moſt properly and moſt commonly taken, as Aſſiſe of Nouel diſſeiſin, is taken for all the writ of Aſſiſe of Nouel diſſeiſin: In the ſame manner Aſſiſe of common of paſture, is taken for al the writ of Aſſiſe of common of paſture, & aſſiſe of Mortdaunceſter, and Aſſiſe of Darreine preſentm̄t, &c. But it ſeemeth that the cauſe why ſuch writs at the beginning were called Aſſiſes, is for this, that by euery ſuch writ it is cōmanded to the ſherife, ỳ he ſummon 12. &c. which is as much to ſay, that he ought to ſummon a Jury, &c. and ſometime Aſſiſe is taken for an ordinance, for to ſet certaine things in a certaine rule & diſpoſition, as an ordinance that is entred in the auncient eſtatutes is called Aſſiſa panis & ſeruitiæ.

Alſo if there be lord & tenant, and the Lord graunteth the rent of his tenant by deed to an other, ſauing to him the other ſeruices, and the tenant attourneth, that is a rent ſecke, as it is aforeſaid: But if the rent bee denied him at the next day of payment, he hath no remedie, for this, that he had not thereof any poſſeſſion:

But

But if the tenant when hee attourneth to the grauntee, or after, will giue a penie, or a halfe penie to the grauntee in name of seisin of rent, then if after at the next day of payment the rent be denied him, he shall haue an Assise of Nouel disseisin. And so it is, if a man grant by his deed a yearly rent issuing out of his land to another, &c. if the grantor then after pay to the grantee a penie, or an halfe penie, in the name of seisin of the rent, then if after the first day of payment the rent be denied, the grantee may haue an Assise, or else not.

Also of rent seek a man may haue an Assise of Mortdaunceſter, or a writ of Aiel, or Cosinage, & all other maner of actions reals, as the case lieth, as he may haue of any other rent.

Also there be three causes of disseisin of rent seruice, that is to say, Rescous, Repleuin, and Enclosure. Rescous is, when the Lord distraineth in the land holden of him for his rent behind, if the distresse be rescued from him, or the Lord come vpon the land, and would distraine, & the tenant, or another man will not suffer him, &c. Repleuin is, when the Lord hath distrained, and Repleuin is made of the distresse, by writ, or by plaint, &c. Enclosure is, if the lands and tenements be so enclosed, that the Lord may not come within the lands and tenements for to distrain. And the cause why such things so done bee disseisins made to the Lord, is for this, that by such things the Lord is disturbed of the mean by which he ought to

haue come to his rent. And foure causes be of disseisin of rēt charge: that is to say, Rescous, Replevin, Inclosure, and Denier, for denying is a disseisin of rent charge, as it is aforesaid of rent secke. And two causes be of disseisin of rent secke: that is to say, Inclosure & Denier. And yet it seemeth that there is another cause of disseisin of all the three rents aforesaid, that is, when the Lord is going to the land holden of him for to distrain for the rent being behind, the tenant hearing this, encountreth him, and forstalleth him the way with force and armes, and menaceth him in such forme, that hee dare not come to the land to distraine for his rent behind, &c. for doubt of death, or bodily hurt, this is a disseisin, for this, that the Lord is disturbed of the meane wherby he ought to come to his rent. And so it is if by such forestalling and menacing, he that hath rent charge, or rent secke is forestalled, or dare not come to the land to aske the rent behind.

The third booke.

Parceners.

PArceners be in two manners: that is to say, Parceners after the course of the Common Law, and Parceners after the Custome. Parceners after the course of the Common Law, bee where a man or woman is seised of certain lands or tenements in Fee simple, or Fee taile, & hath none issue but daugh-

daughters and dieth, & the tenements descend to the daughters, & the daughters enter into the lands & tenements so to them descended, then they be called parceners, and be but one heire to their ancestor, and they be called Parceners, for this, that by the writ that is called Breue de participatione facienda, the law will constraine them that Participation shall bee made among them, & if there be 2. daughters to whom the land descendeth, then they be called two parceners, and if they be 3. daughters, they be called 3. parceners, and 4. daughters, 4 parceners, and so forth. And if a man seised of lands in fee simple, or fee taile, die without issue of his body, & the tenemẽts descend to his sisters, they be parceners as is aforesaid. In the same maner it is, where he hath no sisters, but the land descendeth to his Aunts, they be parceners. But if a man hath but one daughter, she may not be said parcener, but daughter and heire. And it is to wit, that partition betweene parceners may be made in diuers maners: One is, when they agree to make partition, and make partition of the tenemẽts, as if there be 2. parceners, to diuide betweene thẽ the tenement in 2. parts, euery part by himselfe in seueralty of euen value, & if there be 3. parceners, to diuide the tenements in 3. parts in seueralty. And other partition there is to chuse by agreement betweene them, certaine of their friends to make the partition betweene thẽ of the lands & tenements in the forme aforesaid.

And in such cases after such partitions the eldest daughter shall chuse first one of the parts so diuided, which shee will haue for her part. And then the second daughter after her an other part, &c. if it so bee that there bee many sisters: if it be not that they bee otherwise agreed betweene them, for it may be agreed betweene them, that one of them shall haue such Tenements, and another such tenements, &c. without any such first Election, and the part that the elder sister hath, is called in Latine Enitia pars. But if the Parceners agree that the elder sister shal make partition of the tenements in the forme aforesaid, & if she do, then it is said that the elder sister shall chuse the last part after each of her other sisters. Another partition and allotting there is: as if there be 4. Parceners, and after such partition made of the lands, euery part of the land is by it self written in a little scrowle, & it is couered al in ware, in manner of a little ball, so that no man may see the scrowle, then are the foure bals of ware put in a Bonet, to keepe in the hands of an indifferent man, and then the elder daughter first shall put her hand in the bonet, which shall take a ball of ware, & the scrowle within the same ball for her purpartie. And then the second sister shall put her hand in the bonnet, and shal take another. And so then the third sister the third ball, &c. And in this case it behoueth each of them to hold them to their chance and allotment.

Also

Alſo another partition there is, as if there be foure Parceners, and they will not agree that partition ſhalbe made betweene them, then one of thē may haue a writ de Participatione facienda againſt the other three ſiſters, or two may haue a writ of Participatione facienda againſt the other, or they three againſt the 4. at their election, and when iudgement ſhall be giuen vpon ſuch a writ, the iudgement ſhall be ſuch, that partition ſhal be made betweene the parties, and the Sherife in his proper perſon ſhall go to the lands and tenements, &c. and there he by the oath of 12. true men of his bailiwicke, &c. ſhall make partition betweene the parties, the one part of the ſame lands ſhal be aſſigned to the plaintife, or to one of the plaintifes, and another part to another, &c. not making mention in the iudgement of the eldeſt ſiſter more than of the yongeſt, and of the partitiō that he hath thus done, he ſhal make notice to the Iuſtices, &c. vnder his ſeale, and the ſeales of the 12. &c. And ſo in this caſe may you ſee, that the elder ſiſter ſhall not haue the firſt election, &c. But the Sherife ſhal aſſigne the part that ſhe ſhall haue, &c. and it may bee that the Sherife will aſſigne the firſt part to the yonger ſiſter, and the laſt part to the elder.

And note well, partition by agreement betweene Parceners may by the Law be made among them, as well by word without deed, as by deed.

Alſo, if two meaſes deſcend to two Parceners,

ceners, and the one meaſe is worth by yeare xx.s. & the other but x.s. by yeare, in this caſe partition may be made betweene them in ſuch forme, that the one parcener ſhall haue the one meaſe, and the other parcener ſhall haue the other meaſe, and ſhe that ſhall haue the meaſe of xx.s. and her heires ſhall pay a yerely rent of v s. iſſuing out of the ſame meaſe to the other Parcener, and to her heires for euer, becauſe that euery of them ſhall haue euen in value, & ſuch partition made, is good enough, and the ſame Parcener that ſhall haue the rent of v.s. & her heires may diſtraine for the rent of common right in the ſame meaſe of the value of xx.s. if the rent of v.s. be behind at any time, in whoſe hands ſoeuer the ſame meaſe commeth, though there was neuer writing made of it betweene them. In the ſame manner it is of partition of all manner of Lands and tenements, &c where ſuch rent is reſerued to one, or to diuers parceners vpon ſuch partition, &c. but ſuch rent is not rent ſeruice, but rent charge, of common right had and reſerued for egalty of the partition. And note well that none be called Parceners by the Common Law, but women or the heires of women, and which come by Lands and Tenements by deſcent, for if ſiſters purchaſe lands or Tenements, of this they be called Iointenants and not Parceners. Alſo if two parceners of land in fee ſimple make partition betweene them, &c. And the part of the one

valueth

valueth much more then the part of the other, if they were at the time of partition of ful age, that is to say, of 21. yeares, then they alway shall abide and neuer be defeated: But if the Tenements whereof partition is made, be to them in fee tayle, and the part that the one hath is much better in yearely value then the part of the other, howbeit that they bee excluded during their liues to defeate the partition, yet if the parcener that hath the lesser part in value hath issue and dieth, the issue may disagree to the partition, & enter, & occupy in common that other part that is allotted to her Aunt, & so the Aunt may enter and occupy in common the other part allotted to her Sister, as if no partition thereof had beene made, &c.

Also, if two Parceners of tenements in fee take husbands, and they and their husbands make partition betweene them, if the part of the one be lesse in yerely value then the part of the other, during the liues of the Husbands the partition shall bee in his force & strength yet after the death of the husband the wife that hath the lesse part may enter in her sisters part as it is aforesaid, & defeate the partition: But if the partition so made betweene them were such, that euery part at the time of allotment were egall of yearely value, then it may not after be defeated in such cases.

Also, if there be two parceners, & the yonger of them be within the age of 21. yeares, & partition is made betweene them, so that the

part that is allotted to the younger, is lesse in value than the part of the other: In this case the yonger during the time of her nonage, and also when she cõmeth to full age of 21. years, may enter in the portion to her sister allotted, &c. and defeat the partition: But such a parceuer ought to take heed when shee commeth to full age, that she ne take to her owne vse, all the profits of the tenements to her allotted, for by that she agreeeth to the partitiõ at such age, in which case the partition shall stand and abide in his force and strength, &c. but peraduenture the profits of the halfe she may take, leauing the profits of the other halfe, to her sister, &c. It is to wit, that when it is said, males and females be of full age, that shall bee vnderstood of the age of 21. yeares: for if any feoffement or graunt, release, confirmation, obligation, or any other writing before any such age bee made by any of them, &c. or that any within such age be Baylife or Receiuer with any man, &c. all seruieth for nought, & may bee auoided. Also a man before such age shall not be sworne in no Iurie, nor no inquisition.

Also if tenements be giuen to a man in the taile, which hath as much land in Fee simple, and hath issue two daughters and dieth, and the daughters make partition between them, so that the lands in fee simple be allotted to the yonger daughter, in allowance of the Tenements tayled, allotted to the elder daughter, if after such partition the younger daughter alie-

alieneth the land in Fee ſimple to another in Fee, and hath iſſue a ſonne, or a daughter, and dyeth, the iſſue may enter in the Tenements tailed, and them hold in purparty with their Aunt, and this is for two cauſes: One is for that that the iſſue may haue no remedy of the Land aliened by the mother, for that the land was to her in fee ſimple, and inſomuch as he is one of the heires in the taile, and hath nothing recompenced of that that to him belongeth of the tenements tailed, it is reaſon that he haue his purpartie of the land in taile, and namely when ſuch Partition maketh no diſcontinuance of the taile, as ſhalbe ſaid hereafter in the chapter of Diſcontinuance. But the contrary is holden M 20. H. 6. fo. 13. that is to ſay, that he may not enter vpon the parcener that hath the land tailed, but is put to his ſuite by Writ of Formedon Another cauſe is, for that it ſhal be counted the folly of the elder ſiſter, that ſhee would agree to the partition, where ſhee might haue had halfe the land in fee ſimple, & halfe the tenements in the taile for purparty, and ſo to be ſure without damage, &c.

Alſo if a man ſeiſed of a plough land by iuſt title, diſſeiſeth an infant within age of another plough land, & hath iſſue two daughters, and dieth ſeiſed of both thoſe plough lands, the infant then being within age, and the daughters enter & make partition, & the one plough land is allotted for the purparty of the one, as percaſe to ỹ yonger ſiſter in allowãce of the other plough

plough land which is allotted to the purparty of the other, so that after the Infant entreth in the plough land of the which he was dissei-sed, vpon the possession of the parcener that hath the same plough land, then the same parcener may enter into the other plough land that her sister hath, and holdeth in parcenary with her: But if the yonger sister alien the same plough land to another in fee simple before the entrie of the Infant, and after the child entreth vpon the possession of the alienee, then she may not enter into the other plough-land, for this, that by her alienation she hath vtterly dismissed her selfe to haue any part of the tenements as parcener: But if the yonger sister before the entrie of the Infant make thereof a lease for terme of yeares, or for terme of life, or in fee taile, sauing the reuersion to her, and after the child entreth, there peraduenture it is otherwise, for this, that she dismisseth not her selfe of all that that was in her, but hath reserued to her the reuersion and the fee simple, &c.

Also, if there be three or foure Parceners that make partition betweene them, if the part of the one parcener be defeated by such lawful entrie, she may enter and occupie the other lands of all the other parceners, and compell them to make new partition of the other lands betweene them, &c.

Also, if there be two Parceners, and the one taketh an husband, and the husband and the

the wife haue issue betweene them, & the wife dieth, & the husband holdeth him in the halfe as tenant by the curtesie: in this case the parcener that suruiueth, and the tenant by the curtesie may wel make partition betweene them, &c. And if the tenant by curtesie wil not agree to make partition, then the parceners that suruiueth may haue a writ de Participatione facienda, &c and compel him to make partition. But if the tenãt by the curtesie wil haue partition betweene them, & the parcener that suruiueth wil not haue it, then the tenant by the curtesie shal haue no remedy for to haue partition: for he may not haue a writ de Participatione faciẽda, for this, that he is not parcener, for such a writ lyeth for Parceners onely. And so may ye see that the writ de Participatione facienda lieth against tenant by the curtesie, and yet himself may not haue such a writ.

Parceners by Custome.

PArceners by the Custome be where a man seised in fee or fee taile of lands or tenemẽts that be of the tenure called Gauelkind within the Shire of Kent, & hath issue diuers sonnes and dieth, such Lands and Tenements shall descend to all the sonnes by the custome, and they euenly shall inherite and make partition betweene them by the custome as females doe, and a writ de Participatione facienda lyeth in this case as betweene females, but it

it behoueth in the declaration to make mention of the custome. Also such custome is in other places in England. And also such custome is in North wales.

Also there is another Partition that is of another nature, and in another forme than any of the partitions aforesaid: As a man seised of certaine Lands in fee simple hath issue two daughters, and the elder is married, and the father giueth parcell of the same lands to the husband with his daughter in franke mariage, and dieth seised of the remnant, the which remnant is of more greater value by yeare than be the Lands giuen in franke mariage: in this case the husband and the wife shall haue nothing for their part of the said remnant, but if they will put in their lands giuen in franke mariage in hotchpot with the remnant of the Land with her sister, and if they will not doe so, then the younger sister may occupy the same remnant, and take to her the profits onely. And it seemeth that this word Hotchpot is in English a pudding, for in such a pudding is commonly put not one onely thing, but one thing with another, and for this it behoueth in such case to put the Lands giuen in Franke marriage with the other Lands in Hotchpot, if the husband and the wife will haue any thing in the other remnant, &c. This word Hotchpot is but a terme of similitude, and is as much to say, as to put Lands giuen in Franke marriage,

age, and other lands in fee simple, &c. together, and this is to such intent to accompt the value of all the lands, that is to say, of the lands giuen in Frankemariage, & the remnant that was not giuen, and then partition shall bee made in this forme that ensueth. As put case that a man is seised of xxx. acres of Land in fee simple, euery acre in value 12. pence by the yeare, which hath issue two daughters, and the one is couert baron, and the father giueth x. acres of the xxx. acres to the husband with his daughter in Frankemarriage and dyeth seised of the remnant, then the other sister shall enter into the remnant, that is to say, in the xx. acres, and shall occupie it to her owne vse, except the Husband and the wife will put their x. acres giuen to them in frankemariage with the other xx. acres in Hotchpot, that is to say, together, and then when the value is knowne of euery acre, that is to say, euery acre is yerely worth 12. d then the partition shal be made in such forme, that is to say, that the husband & the wife shall haue aboue the x. acres giuen to them in frankmariage v. acres in seueralty of the xx. acres, and the other sister shall haue the remnant, that is, xv. acres of the xx. acres for her part, so that accompting the x. acres that the husband and the wife had in Franke marriage, and the other fiue acres of the xx. acres, the husband and the wife haue as much in yearely value as the other sister hath, and so alwaies vpon such partition the Lands giuen

giuen in frankmariage, abide to the donees, or to the heires, &c. after the forme of the gift, &c. For if the other parcener should haue any thing of this that is giuen in frankmariage, of this should follow an inconuenience, and a thing against reason, which the law will not suffer, &c. And the cause why ỹ lands giuē in frankmariage shalbe put in hotchpot, is this, that when a man giueth lands & tenements in frankmarriage with his daughter, or with his other cosin, it is to be vnderstood by the Law, that such gift made by such words Frankemarriage, is an aduancement of his daughter, or of his cosin, and namely, when the donor and his heires shall not haue any rent or seruice of him, except fealtie, vntill the fourth degree be passed, &c.

And for such cause the law is that she shall haue nothing of the other lands & tenements descended to the other parceners, &c. if she will not put the tenements giuen in frankmariage in Hotchpot, as is aforesaid, and if she will not put the lands giuen in frankmariage in Hotchpot, then she shall haue nothing in the remnant, for this, that it shall be vnderstood by the Law, that she is sufficiently aduanced, to which aduancement shee agreeth and holdeth her selfe contented.

The same Law is betweene the heires of the Donees in Frankmariage and the parceners, &c. if the Donees in Frankmariage die before their ancestours, or before such par-

tition

tition,&c.as to put in Hotchpot,&c.

And note well, that gift in Frankmariage was by the Common Law, before the Statute of Westminster the second, and alway after so hath beene vsed and continued, and so forth.

Also such putting in hotchpot,&c.is where the other lands or tenemẽts that were not giuen in frankmarriage descend from the donor in frankmariage only, for if the lands descend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor, or other ancesters, and not by the donor,&c.there it is otherwise,for in such case she to whom such gift in Frankemarriage is made, shall haue her part as if no such gift in Frankmariage had beene made, for this,that she was not aduanced by him,&c.but by another.

Also,if a man seised of xxx. acres of Land, euery acre of euen yearely value, hauing issue two daughters,as is aforesaid, and giueth of this to the husband of the daughter xb. acres in frankmariage, and dieth seised of the other xb.acres,in this case that other sister shal haue the 15. acres so descended to her onely, & the husband and the wife shal not put in such case the xb.acres to him giuen in Frankmarriage in Hotchpot,&c. for this,that the Tenements giuen to him in Frankmariage be of as good yerely value as the other lands descended, &c. For if the lands giuen in Frankemarriage were

were of as euen value as the remnant, or of more value. then in vaine and to none intent such lands giuen in franke marriage shall bee put in hotchpot, &c. for this that she may haue nothing of the other lands descended, &c. For if she should haue any parcel of the other lands descended, then should she haue more in yerely value than her sister, &c. which the Law will not, &c. And as it is said in the cases aforesaid of two daughters, or two parceners, in the same manner, and in like case is, where there bee moe sisters, after that as the case and the matters be, &c.

And it is to wit, that lands and tenements giuen in franke mariage, shall not be put in Hotchpot, but with the lands descended in fee simple, for of lands descended in fee taile, partition shalbe made as if no such gift in Frank marriage had beene made. Also no lands shall be put in Hotchpot with other, but lands that be giuen in franke mariage only. For if any woman haue any other lands or tenements by any other gift in the taile, she shall neuer put such lands so giuen in hotchpot, &c. but she shal haue the part of the remnant, descended, &c. that is as much as the other parcener shall haue of the same remnant.

Also another Partition may bee made betweene Parceners, that varieth from the partitions aforesaid: As if there be three Parceners, & the yongest would haue partition, and the other two would not, but will hold in parcena-

cenarie that that to them belongeth without partition: In this case if one part be allotted in seuerality to the yonger sister after that that she ought to haue, then the other may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good enough. And if after the elder & middle parcener will make partition between them of that that they held, they may well do so when they please. But where partition shalbe made by force of a writ de Participatione facienda, &c there otherwise it is, for there it behoueth that euery parcener haue his part in seuerality, &c. More shall be said of Parceners in the Chapter of Iointenants, and also in the Chapter of Tenants in common.

Iointenants.

IOyntenants be, as a man seised of certaine lands or tenements, &c. and thereof hath infeoffed, two, or three, or foure, or more, to haue and to hold to them and to their heires, or to haue and to hold to them for terme of their liues, or for terme of anothers life, by force of which feoffement they be seised, such be Iointenants.

Also, if two or three disseise another of any lands or tenements to their owne vse, then the disseisors bee Iointenants: But if they disseise another, to the vse of one of them, then be they no Iointenants, but he to whom the

vle of the disseisin is made is sole tenant, and the other haue nothing in the tenancie, but be called coadiutors to the disseisin, &c.

And note well, that disseisin is properly where a man entreth into any lands or tenements, where his entrie is not lawfull, & putteth him out that hath the franktenement, &c. And it is to wit, that the nature of iointenancie is, that he that suruiueth shall haue only the whole tenancie, after such estate as he hath if the iointure be continued, &c. As if three iointenants be in fee simple, & the one hath issue & dieth, yet they that suruiue shal haue the tenements whole, and the issue shall haue nothing, and if the second iointenant haue issue & dye, yet the third that suruiueth shal haue the tenements whole, and shal haue them in fee simple to him and to his heires. But otherwise it is of parceners, for if three parceners be, & before any partition the one hath issue and dieth, that that to her belongeth shal descend to her issue, and if such a parcener die without issue, then that that to her belongeth shal descend to her coheires, so that they shal haue this by descent, and not by the suruiuor as Iointenants haue, &c. And as the suruiuor holdeth place among Iointenants, &c. in the same manner it holdeth place among them that haue ioynt estate or possession with others of chattels real or chattels personall. As if a lease of lands or tenements be made to many for term of years he that suruiueth of the lessees shall haue the tene-

tenements whole to him during the terme by force of the same lease. And if an horse, or other chattell personall be giuen to many men, hee that suruiueth shall haue them to himselfe.

In the same maner it is of debts & duties, &c For if an obligation be made to many for one dutie, he that suruiueth shall haue al the debt, and so it is of al other couenants & contracts.

Also some iointenants may be ỹ may haue ioint estates, and be ioyntenants for terme of their liues, and yet they haue seuerall inheritance: As if lands be giuen to two men, & to the heires of their two bodies ingendred: In this case the donees haue ioint estate for term of their two liues, and they haue seuerall inheritance: for if the one of the donees haue issue and die, the other that suruiueth shall haue all by the suruiuor for terme of his life. And if he that suruiueth hath also issue and die, then the issue of the one shall haue the halfe of the land, and the issue of the other shall haue the other halfe of the Land, and they shall hold the land betweene them in common, and be not iointenants, but tenants in common. And the cause that such Donees in such cases haue ioynt estate for terme of their liues, is this, for this that at the beginning Lands were giuen to them two, which words without more saying, made a ioynt estate to them for terme of their liues. For if a man will let land to another by deed, or without deed, not making mention what estate he hath, and of this maketh

liuerie of seisin: In this case the lesse shall haue estate for terme of his life, and so in so much that the lands were giuen to them, they haue a ioint estate for term of their liues. And the cause why they haue seueral inheritance is this, insomuch that they cannot by possibility haue an heire betweene them ingendred as a man and a woman may haue, &c. then the law will that their estate and their inheritance shal be such, as reason will after the forme & effect of the words of the gift, and that is to the heires that the one ingendreth of his body by any of his wiues, & the heires that the other ingendreth of his body by any of his wiues, &c. So it behoueth by necessity of reason, that they shall haue seuerall inheritances. And in such case, if the issue of one of the donees after the death of the donees die, so that he hath no issue aliue of his body ingendred, then the donor or his heires may enter in the halfe as in his reuersion, though the other of the donees hath issue aliue, &c. And the cause is, for so much as the inheritance is seuered, &c. the reuersion in the law is seuered, &c. and the survivour of the issues of the other shall hold no place to haue the whole. And so as it is said of males, in the same manner it is where land is giuen to two females, and to the heires of their two bodies begotten.

Also if lands be giuen to two females, and to the heires of one of them, this is a good Iointure, and the one hath a freehold, and the other

other hath fee ſimple, & if ſhe that hath the fee dye, ſhe that hath the freehold ſhall haue the whole by the ſuruiuor for terme of life. In the ſame maner it is where tenements be giuen to two, & to the heires of the body of one of them ingendred, the one hath freehold, and the other fee taile. Alſo if two Iointenants be ſeiſed of eſtate of fee ſimple, and the one granteth a rent charge by his deed to another out of that that to him belongeth, &c. In this caſe during the life of the grantor, the rent charge is effectual. But after his deceaſe the rent charge is void as to charge the land, for that he that hath the land by the ſuruiuor, ſhall haue the land diſcharged: And the cauſe is for this, that he that ſuruiueth claimeth to haue the land by the ſuruiuor, &c. and not by deſcent of his fellow, &c. But otherwiſe it is of parceners, for if there be two parceners of tenements in fee ſimple, and before any partition the one chargeth that that to him belongeth by his deed, with a rent charge, &c. and dieth without iſſue, & that that to him belongeth, deſcendeth to the other parcener, In this caſe the other Parcener ſhall hold the land charged, &c. for this that he commeth to the halfe by deſcent as heire, &c.

Alſo, if there be two Iointenants in fee ſimple within a Borough where the lands and tenements within the ſame Borough bee deuiſable by Teſtament, if the one of the ſaid Iointenants deuiſe that, that to him belongeth by Teſtament, &c. and die, this deuiſe is

void. And the cause is this, that no deuise may take effect but after the death of the diuisor. And for this that by his death all the Land incontinent commeth by the law to his fellow that suruiueth, by the suruiuor, which neither claimeth nor hath any thing in the land by the deuise, but in his owne right by the suruiuor after the course of the Law, &c. for this cause such deuise is void.

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise, &c. Causa qua supra.

Also it is commonly said, that euery Iointenant is seised of the land that he holdeth iointly, &c. throughout and by all. And this is as much to say, that he is seised by euery parcel, & by all, &c. and this is true, for in euery parcel, & by each parcell, & by all the lands & tenements he is ioyntly seised with his fellowes, &c.

And if two Iointenants be seised of certain Land in fee simple, and the one letteth that, that to him belongeth to a stranger for terme of xl. yeares and dieth within the terme: In this case after his decease the lessee may enter and occupie the halfe to him letten during the terme, &c. though the lessee neuer had possession of it in the life of the lessor, by force of this lease &c. And the diuersity betweene the case of the grant of a rent charge, and this case is this, for in the grant of a rent charge by a iointenant ỹ tenements abide alway as they were before without that, that any hath any right to haue par=

parcell of the tenements but himselfe, and the tenements abide in such plight as they were before the charge, &c. But where a Lease is made by a Iointenant to another for term of yeares, &c. incontinent by force of the lease the lessee hath right in the same land, that is to say, of all that that to his lessor belonged, and to haue that by force of the same lease during his terme, &c. and this is the diuersitie, &c.

Also iointenants if they will may make partition betweene them, & the partition is good enough, but they shall not be compelled by the law to do it, but if they will make partition of their proper will and agreement, the partition shall stand in his strength. P. 3 E. 4 See Sta. 31. H. 8 ca 21. and 2. H 8 ca. 32

Also if a ioint estate be made of land to the husband and the wife, and to a third person, in this case the husband & the wife haue not in the Law in their right but the halfe, &c. And the third person shal haue as much as the husband and the wife haue, that is to say, the other halfe, &c. And the cause is, for that the husband and the wife be but one person in the law, & be in like case as if the estate bee made to 2. iointenants, where each one hath by force of the ioin— ture the one halfe, and the other the other halfe. In the same maner it is, where an estate is made to the husband & the wife, and to other two men, in this case the husband & the wife haue not but the third part, and the other two men the other two parts, &c. Causa

qua supra More shall be said of the matter touching Jointenancy, in the Chapter of Tenants in Common.

Tenants in Common.

TEnants in Common bee they, that haue lands and tenements in fee simple, fee taile, or for terme of life, &c. which haue such lands and tenements by seuerall title, and not ioynt title, & none of them knoweth that that is seuerall to him. But they ought by the law to occupy such lands & tenements in common & vndiuided to take the profits in common. And because that they come to such lands and tenements by seueral titles, & not by one selfe iointitle, and their occupation & possession shall be by the law among them in common, therefore they be called Tenants in Common: as if a man enfeoffe two Jointenants in fee, and one of them alieneth that that to him belongeth to another in fee, now the other Jointenant and the alienee be tenants in common, for this that they be seised in such tenements by seuerall titles, for the alienee commeth to the halfe by the feoffement of the one iointenāt, & the other iointenant hath the other halfe by force of the first feoffement made to him & to his first fellow, and so they be in by seuerall titles, and by seuerall feoffements, &c. And it is to wit, that when it is said in any Booke, that a man is seised in fee, without more saying, it shall be vnder-

vnderstood fee simple, for it shall not be vnderstood by such word in fee, that a man is seised in fee taile, except that there be put thereto such addition, that is to say, fee taile.

Also if three Jointenants be, and the one of them alieneth that that to him belongeth to another in fee: In this case the alienee is tenant in common with the other two Jointenants. But yet the other two Jointenants be seised of the two parts ioyntly, and of those two parts the suruiuour betweene them holdeth place, &c.

Also if there be two Jointenants in fee, & the one giueth that that vnto him belongeth to another in the taile, the donee and the other Joyntenant be tenants in common, &c. But if the Lands be giuen to two men, and to the heires of their two bodies ingendred, the donees haue ioint estate for terme of their liues, and if each of them haue issue and dye, their issues shall hold in common, &c. But if Lands be giuen to two Abbots, as to the Abbot of Westminster, and to the Abbot of Saint Albons, to haue and to hold to them and to their successors, in this case they haue incontinent at the beginning estate in common, and not ioynt estate: And the cause is for this, that euery Abbot, or other Soueraign of an house of Religion, before that he be made Abbot, or Soueraigne, was but a dead man in the law. And when he is made Abbot, he is as a man personable in the Law, all onely to purchase,

and

and to haue lands and tenements, and other things to the vse of his house, & not to his own proper vse, as other secular men may. And for this in the beginning of their purchase, they be tenants in common. And if the one of them die, the Abbot that suruiueth shal not haue al by the suruiuor, but the successor of the Abbot that dieth shall hold the halfe in common with the Abbot that suruiueth, &c.

Also if lands be giuen to an Abbot and to a secular man, to haue & to hold to them, that is to say, to the Abbot and his successors, and to the secular man, to him and to his heires, they haue estate in common, Causa qua supra.

Also if lands be giuen to two men, to haue and to hold, the one halfe to the one and to his heires, and the other halfe to the other and to his heires, they be tenants in common, &c.

Also if a man seised of certaine Lands enfeoffeth another in the halfe of the same land, without any speech of assignment or limitation of the same halfe in seueralty at the time of the feoffement, then the feoffee and the feoffor shall hold the parts of the land in cõmon. And in the same maner, as is afore said of tenãts in cõmon of lands or tenements in fee simple or in fee taile, in the same maner may it be said of tenants for terme of life. As if two Iointenants be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, & the other Iointenant letteth that, that to him belongeth to another for terme of life, these two

lessees

lesses be tenants in common for term of their liues, &c.

Also if a man let lands to 2. men for terme of their liues, & the one granteth all his estate of that that vnto him belongeth to another, &c. then the other tenant for terme of life, & he to whom the grant is made be tenants in common during the time that both lessees be alive.

Also it is to be remembred, that in all other such cases, though that they be not here expressly named or specified, if they be in like reason, they be in like law.

Also if there be two Jointenants in fee, & the one letteth that, that vnto him belongeth to another for terme of life, the tenāt for terme of life, during his life, and the other iointenant that did not let be tenants in cōmon. And vpon this case a question may rise, as this: Put the case that the lessor hath issue and dieth, liuing the other Jointenant his fellow, and liuing the tenant for terme of life, the question may be such, if the reuersion of the half, &c. that the lessor hath, shall descend to the issue of the lessor, or that the other iointenant shall haue it by the suruiuour. And some haue said in this case, that the other iointenant shal haue the reuersion by the suruiuor, & their reason is such, whē the iointenants were iointly seised in fee simple, &c. though the one of them made estate of that that vnto him belongeth for terme of life, and though that hee hath seuered the franktenement of that that to him belongeth by

by the Leaſe, yet he hath not ſeuered the fee ſimple, but the fee ſimple abideth to him iointly as it was before. And ſo it ſeemeth vnto them that the other Iointenant that ſuruiueth, ſhall haue the reuerſion by the ſuruiuour, &c. And other haue ſaid the contrarie, and this is their reaſon, when one of the Ioyntenants letteth this that to him belongeth to another for term of his life, that by ſuch Leaſe the Franktenement is ſeuered from the iointure: And by the ſame reaſon the reuerſion that is dependant vpon the ſame franktenement is ſeuered from the iointure. Alſo if the Leſſor had reſerued to him a yearly rent vpon the Leaſe, the leſſour onely ſhould haue had the rent, &c. The which is a proofe that the reuerſion is onely to him, and that the other hath nothing in the reuerſion, &c. And if the Tenant for terme of life were impleaded, &c. and made default after default, then the leſſour ſhall be onely of this receiued to defend his right, and his fellow in this caſe in no manner ſhall be receiued: which proueth that the reuerſion of the halfe is onely in the leſſour. And ſo by conſequence if the Leſſour die, liuing the leſſee for terme of life, the reuerſion ſhall deſcend to the heires of the Leſſour, &c. and not come to the other Iointenant by the ſuruiuour, Ideo quære. But in this caſe, if the Iointenant that hath the franktenement haue iſſue and dye, liuing the leſſour & the leſſee, then it ſeemeth that the iſſue ſhall haue the halfe in his demeſne as of

fee

fee by deſcent, for this that the franktenement may not by nature of the iointure be annexed to a reuerſion. And it is certaine, that he that did not let was ſeiſed of the halfe in his demeſne and of fee, and none ſhall haue any iointure in his franktenement, Ergo this ſhall deſcend to his iſſue, Sed quære. But if it be thus, that the Law in this caſe is thus, that if the leſſor dis liuing the leſſee, and liuing the other iointenant that hath the franktenement of the other halfe, that the reuerſion ſhall deſcend to the iſſue of the leſſor, then is the iointure and the title that any of them may haue by the ſurmiſour by right of the ioynture, annulled and all vtterly defeated for euer.

In the ſame maner it is, if the Iointenant that hath the Franktenement die, liuing the leſſor and the leſſee, if the law be ſuch that his franktenement and fee that he hath in the halfe ſhall deſcend to his iſſue, then the ioynture ſhall be defeated for euer, &c.

And if three Ioyntenants be, and the one releaſeth by his deed to one of his fellowes, all the right that he hath in the land, then hath he to whom the releaſe is made, the third part of the lands by force of the releaſe, and he & his fellow ſhall hold the other two parts ioyntly. And as to the third part that he hath by force of the releaſe, he holdeth the third part with himſelfe and his fellow in common.

And it is to wit, that ſometime a deed of Releaſe ſhall take effect, and ſhall be in vſe to

put

put the estate of him that made the release, to him to whom the release is made, as in the case aforesaid.

And also if a joynt Estate be made to the husband and his wife, and to a third person, and the third person releaseth his right that he hath, &c. to the husband, then hath the husband the halfe that the third person had, and the wife of this hath nothing. And if in such case the third release, &c. to the wife, not naming the husband in the release, then hath the wife the halfe that the third person had, and the husband hath nothing of this, but in right of his wife, for this that in such case the release shall inure to put the estate to him to whom the release is made, of all that that belongeth to him that made the release. And in some case a release shall inure to put all the right that he hath that made the release, to him to whom the release is made. As if a man seised of certaine Lands and Tenements, is disseised by two disseisors, if the disseisee by his deed release all his right, &c. to one of the disseisours, then he to whom the release is made, shall haue and hold all the Tenements to him onely, and put his fellow out of every occupation of it: and the cause is, for this, that the two disseisors were seised in the Tenements by wrong of them done against the Law. And when one of them hath the release of him that had right to enter, &c. this right in such case resteth in him to whom the re-

releaſe is made, & in ſuch plight, as if he that had the right had entred and enfeoffed him, &c. And the cauſe is for this, that he that before had an eſtate by wrong, that is to ſay, by diſſeiſin, now by the releaſe hath a rightfull eſtate.

And in ſome caſe a releas ſhal enure by way of extinguiſhment, and in ſuch caſe ſuch releas ſhall helpe the tointenant to whom the releaſe is not made, as well as him to whom the releaſe is made. As if a man be diſſeiſed, & the diſſeiſor maketh a feoffemēt to 2. men in fee, if the diſſeiſee releaſe to one of the feoffees in fee by his deed, thē ſuch a releas ſhal inure to both the feoffees, for this, that the feoffees haue eſtate by the law, that is to ſay, by the feoffement, & not by any wrong done to any other.

And in the ſame manner it is, if the diſſeiſor make a releaſe to a man for term of life, the remainder ouer to another in fee, if the diſſeiſee releaſe to the Tenant for terme of life, all his right, &c. this releas enureth as well to him in the remainder, as to the tenāt for terme of life &c. And the cauſe is for this, that the tenāt for terme of life cōmeth to his eſtate by the courſe of the law, and for this the releaſe ſhall enure & take effect by way of extinguiſhment of the right of him that hath releaſed, &c. And by this releas the tenāt for terme of life hath no greater eſtate then he had before the releaſe made vnto him, and the right of him that releaſed is all vtterly extinct. And in ſo much that ſuch re-

releaſe cannot inlarge the eſtate of the tenant for terme of life, it is reaſon that the releaſe ſhall enure to him in the remainder, &c. Which ſhall be ſaid of Releaſes, in the Chapter of Releaſes.

Alſo if there be two parceners, and the one alieneth that that vnto him belongeth to another, then the other parcener and the alienee be Tenants in common.

Alſo Tenants in common may be by title of preſcription, if the one and his anceſtors, or they whoſe eſtate he hath in the halfe, haue holden in Common, the ſame halfe with the other tenant that hath the other halfe, & with his anceſtors, of them whoſe eſtate he hath as vndiuided, from time whereof no memory runneth. And diuers other matters may make and cauſe men to be tenants in common that be not here expreſſed.

Alſo in ſome caſe tenants in common ought to haue of their poſſeſſion ſeuerall actions, and in ſome caſes they ſhall ioyne in one action: for if there be two Tenants in common, and they be diſſeiſed, they ought to haue againſt the diſſeiſor, two Aſſiſes, & not one Aſſiſe, for euery of them ought to haue an aſſiſe of his halfe, &c. and the cauſe is for this, that tenants in common were ſeiſed by ſeuerall titles: But otherwiſe it is of Iointenants, for if there be 20 Iointenants, and they be diſſeiſed, they ſhall haue in all their names but one aſſiſe, becauſe that they haue had but one ioint title.

Alſo

Also if there be three Jointenants, and one releaseth to one of his Fellowes all the right that he hath, and after the other two be disseised of the whole, &c. in this case the other shall haue seuerall Assises in this forme, that is to say, they shall haue in both their names one Assise of the two parts, &c. for this that they held the two parts ioyntly at the time of the disseisin: And as to the third part, he to whom the Release is made, ought to haue thereof an Assise in his owne name, for this, that as to the third part he is Tenant in common, &c. for this, that he came to the third part by force of the release, and not onely by force of the Joynture.

Also, as to sue actions that touch the realty, there is diuersity betweene parceners that be in by diuers descents, and tenants in common. For if a man seised of certaine lands in fee, haue issue two daughters & die, and they enter, &c. and each of them haue issue a sonne, & dieth without partition made betweene them, by which the one halfe descendeth to the sonne of the one parcener, and the other halfe descendeth to the sonne of the other parcener, & they enter and occupy in common, and be disseised: in this case they shal haue in their two names one Assise, and not two Assises: and the cause is, that though they come in by diuers descents, &c. yet they be Parceners, and a writ de Participatione faciēda lieth betweene them, and they be not Parceners, hauing regard or

respect onely to the seisin and possession from their mothers, but they be parceners, having more respect to their estate that descended frō their grandfather to their mothers: For they may not be parceners, where their mothers were not parceners before, &c. And so to such respect and consideration, that is to wit, as to the first descent, that was to their mothers, they haue a title in parcenary, the which maketh them parceners: And also they be but as one heire to their common ancestor, that is to say, to their Granfather, from whom the land descended to their mothers: And for these causes before partition betweene them, &c. they should haue one assise, though they come in by seuerall descents, &c.

Also, if there be two tenants in common of certaine lands in Fee, and they giue the same land to another man in the taile, or let it to another man for term of life, yeelding an annuitie, or certaine rent, and a pound of Pepper, or an Hawke, or an Horse, & they beene seised of these seruices, and after all the rent is behind, and they distraine for it, and the Tenant maketh relcous: In that case, as to the rent and the pound of Pepper, they shall haue two Assises: And as for the Hawke, & the Horse, but one Assise. And the cause why they haue two Assises, as the rent and the pound of pepper, is this, in so much that they were Tenants in common by seueral titles, and when they made a gift in the taile, or lease for terme

of

of life, &c. ſauing to them the reuerſion, and yeelding to them certaine rent, &c. Such reſeruation is incident to their reuerſion. And for this that their reuerſion is in common, and by ſeuerall titles, as their poſſeſſion was before, the rent and other things that may bee ſeuered and were to them reſerued vpon the gift, or vpon the Leaſe, which be incident by the Law to the reuerſion, ſuch things ſo ſeuered were of the nature of the Reuerſion, which reuerſion is to them in common by ſeuerall titles.

And it behoueth that the rent of the pound of pepper, which may be ſeuered bee to them in common by ſeuerall Titles. And of this they ſhall haue two aſſiſes, and euery of them in his aſſiſe ſhall make his plaint of the halfe of the rent, and of the halfe of the pound of Pepper, &c.

But of the Hauke & the Horſe which cannot be ſeuered, they ſhall haue but one Aſſiſe, for a man may not make a plaint in Aſſiſe of the halfe of an hauke, or the halfe of an horſe, &c. In the ſame maner it is of other rents and ſeruices that Tenants in common haue in groſſe by diuers titles.

Alſo, as to actions perſonals, Tenants in common ought to haue ſuch actions perſonals ioyntly in all their names, that is to ſay, of Treſpaſſe, or of offences that touch their Tenements in common: as of breaking of their Houſes, breaking of their cloſes and

paſtures, waſting & defouling of their graſſe, cutting of their wood, & to fiſh in their ponds, and ſuch other: In this caſe tenants in common ſhall haue one action ioyntly, and recouer ioynt dammages, becauſe that the action is in the perſonalty, and not in the realty.

Alſo, if two tenants in common make a leaſe of their two tenements to another for terme of yeares, yeelding vnto them yeerly a certaine rent, if the rent be behind, &c. the tenants ſhall haue an action of Debt againſt the leſſee, and not diuers actions, for that the action is in the perſonaltie.

Alſo tenants in common may make partition betweene them if they will, though they ſhall not be compelled by the Law. But if they make partition betweene them by their agreement and conſent, ſuch partition is good enough, as it is adiudged in the booke of Aſſiſes, P. 3. E. 4.

Alſo as there be tenants in cõmon of lands or tenements, &c. as is aforeſaid: In the ſame maner there be tenants in cõmon of chattels reall, and chattels perſonall. As if a Leaſe be made of certaine lands to 2 men for terme of xx. yeres, & when they be thereof poſſeſſed, the one of the leſſees granteth that that vnto him belongeth during the terme to another, then he to whom the grant is made, and the other ſhall hold and occupy in common.

Alſo, if two Iointenants haue the ward of the bodie & of the Lands of a child within

age,

age, and the one of them granteth to another that that vnto him belongeth of the same ward, then the grantee & the other that granteth not, shall haue and hold it in common, &c.

In the same manner it is of chattels personals: As if two haue a ioynt estate by gift or by buying of an Horse, or an Oxe, &c. the one of them granteth that that to him belongeth of the same Horse, or Oxe, &c. Then the grantee and he that granteth not, shall haue & possesse such chattell personall in common, &c. And in such cases where diuers persons haue chattels reals or personals in common, and by diuers titles, and one of them die, the other that suruiueth, shall not haue that by the suruiuor. But the executours of him that dyeth shall hold and occupy that with him that suruiueth as their testator did or ought in his life, &c. for this that their titles and right in this case were seuerall.

Also, in this case aforesaid, if two haue estate in common for terme of yeares, & the one occupy all and put the other out of his possession and occupation: then shall he that is put out of occupation, haue against the other a writ de Eiectione firmæ for the halfe against the other. In the same maner it is where two hold the ward of Lands or Tenements during the nonage of a child, if one put out the other of his possession, he that is out shal haue a writ of Eiectment de garde of the halfe, for this that those things be Chattels reals,

and may be appoꝛtioned and ſeuered, &c. But no ſuch action of treſpas, that is to ſay, Quare clauſum ſuum fregit, & herbam ſuam conculcauit & conſumpſit, &c and ſuch like actions the one may not haue againſt the other, foꝛ this that each of them may enter and occupie in common, &c. thꝛoughout and by all the tenements which they hold in common. But if two be poſſeſſed of chattels perſonals in common by diuers titles, as of an hoꝛſe, oꝛ an oxe, oꝛ a coẅ, if the one take it al to himſelfe out of the poſſeſſion of the other, the other hath none other remedy but to take this of him that hath done to him the ẅoꝛong foꝛ to occupy in common ẅhen he may ſee his time.

In the ſame manner it is of Chattels reall that may not be ſeuered, as in the caſe afoꝛeſaid: Two be poſſeſſioners of a ẅard of the body of a child ẅithin age, if one take the child out of the poſſeſſion of the other, the other hath no remedy by any action by the laẅ but to take the child out of the others poſſeſſion ẅhen he ſeeth his time.

Alſo, ẅhen a man in pleading ẅill ſheẅ a deed of feoffement made vnto him, oꝛ a gift in the taile, oꝛ a leaſe foꝛ term of life of any lands oꝛ Tenements, there he ſhall ſay by foꝛce of ẅhich feoffement, gift, oꝛ leaſe, he ẅas ſeiſed, &c. But ẅhere a man ẅill plead a Leaſe oꝛ grant made vnto him of a chattel reall oꝛ perſonall, there he ſhall ſay by foꝛce of ẅhich he ẅas poſſeſſed.

More shall be said of Tenants in common in the Chapter of Releases, & Confirmations.

Estates vpon Condition.

ESTates that men haue in Lands or Tenements vpon condition, bee in two manners: that is to say, they haue estate vpon condition in deed, or vpon condition in Law. Vpon condition in deed, is as a man by deed indented infeoffeth another in fee, reseruing to him and to his heires yearly a certaine rent, payable at one Feast, or at diuers Feasts by the yeare, vpon condition, that if the rent be behind, &c. that it shall be lawfull to the feoffour and to his heires to enter into the Lands or Tenements, &c. Or if the Land be alienes to another in Fee, to yeeld vnto him certaine rent, &c. And if it hap that the rent be behind by a weeke after any day of payment of it, or by a Moneth, or by a halfe yeare after any day of payment, that then it shall be lawfull to the feoffor and to his heires to enter, &c. In this case, if the rent be not paied at such a day, or before such a time limited & specified within the Condition comprised in the Indenture, then may the Feoffor or his heires enter into such Lands or Tenemenes, and them in his first estate to haue and to hold, and of this to put the Feoffee cleane out: And it is called Estate vpon condition, for this, that the

eſtate of the feoffee is defeaſible, if the condition be not perfoꝛmed.

In the ſame manner it is if lands be giuen in the taile, oꝛ let foꝛ terme of life, oꝛ foꝛ terme of years, vpon ſuch condition, &c. But where a feoffement is made of certaine lands, reſeruing certaine rent vpon ſuch condition, that if the rent be behind, that it ſhal be lawful to the feoffoꝛ and his heires to enter, and the land to hold till they be ſatiſfied oꝛ paied of their rent behind, &c. In this caſe if the rent be behind, and the feoffoꝛ and his heires enter, the feoffee is not excluded cleane out, but the feoffoꝛ ſhall haue and hold the land, and take the pꝛofits till that he be ſatiſfied of the rent behind, &c. And when he is ſatiſfied, the feoffee may reenter in the ſame Land, and hold it as he did befoꝛe, foꝛ in ſuch caſe the feoffoꝛ ſhall haue it but in maner foꝛ a diſtreſſe, in the meane time till he be ſatiſfied of the rent, &c. though he take the pꝛofits in the meane time.

Alſo, diuers woꝛds among other there be, that by vertue of themſelfe make eſtate vpon condition: One is, this woꝛd of Condition, as A. enfeoffed B. of certaine Land, to haue and to hold to the ſame B. and to his heires vpon Condition, that the ſame B. and his heires ſhall pay, oꝛ do to be payed to the foꝛeſaid A. and to his heires yearly ſuch rent, &c. In theſe caſes without any moꝛe ſaying the feoffe hath eſtate vpon condition. Alſo if the Condition were ſuch, Pꝛouided alway, that

the

the aforeſaid B. pay, or doe to be payed to the aforeſaid A. ſuch rent: Or if they were thus, ſo that the aforeſaid B. pay, or do to be payed ſuch rent: In theſe caſes without any more ſaying, the feoffee hath eſtate but vpon condition, ſo that if he performe not the condition, the feoffor and his heires may enter, &c.

Alſo, other words there be in a deed that cauſeth the tenements to be conditionall, as vpon ſuch a Feoffement a rent is reſerued to the feoffor, &c. and after it is put in the deed, that if it chance the aforeſaid rent to be behind in part or in all, &c. that then it ſhall bee lawfull to the feoffor and to his heires to enter, and this is a deed vpon Condition. But there is diuerſitie betweene the words (if it chance, &c.) and the words next aforeſaid, for this word (if it chance, &c.) is nought worth to ſuch condition, but if it hath theſe words following, that is to ſay, that it ſhall be lawfull to the feoffor and to his heires to enter, &c. But in theſe caſes aforeſaid, it needeth not by the law to put ſuch clauſe, that is to ſay, that the feoffor and his heires may enter, &c. for this, that they may ſo doe by force of the words aforeſaid, becauſe they containe in themſelues in the Law a Condition, that is to ſay, That the feoffor and his heires may enter. Yet it is common in all ſuch caſes aforeſaid, to put ſuch clauſes in the deeds, that is to ſay, if the rent be behind, &c. that it ſhall be lawfull to the ſame Feoffour and his

heires

heires to enter, &c. And this is well done to that intent for to declare & expreſſe to the lay men that be not learned in the Law, the manner and the condition of the feoffement, &c. As a man ſeiſed of land as of franktenement, lets the ſame land to another by deed indented for terme of yeares, yeelding vnto him certaine rent, it is vſed to bee put in the deed, that if the rent be behind at the day of payment, by a Moneth, &c. that then it ſhall be lawfull to the leſſor to diſtraine, &c. and yet the leſſor may diſtraine of common right for the rent behind &c. though ſuch words neuer were ſet in the deed, &c.

Alſo, if a feffement be made vpon ſuch condition, that if the Feoffour pay at a certaine day, &c. twentie pounds of money, that then the Feoffour may enter, &c. In this caſe the Feoffee is called Tenant in Morgage, that is as much to ſay in French, as Mortgage, and in Latin Mortuum vadium, and in Engliſh, a dead pledge. And it ſeemeth that the cauſe why it is called Mortgage, is that it ſtandeth in doubt if the feoffor will pay at the day limited, ſuch a ſumme, or not: And if he pay not, then the land that is put in pledge vpon condition for the payment of the money, is gone from him for euer, and ſo dead as to the Tenant, &c.

Alſo, as a man may make a Feoffement in fee in Mortgage, ſo may a man make a gift in the taile in Mortgage, and a leaſe for terme

of

of like, or for terme of yeares in Mortgage. And all such tenants be Tenants in Mortgage after the state that they haue in the Lands, &c.

Also, if a Feoffement be made in Mortgage, vpon condition that the Feoffour shall pay such a summe at such a day, &c. as is betweene them by their deed indented accorded and limited, though the Feoffour dye before the day of payment, &c. yet if the heire of the Feoffor pay the summe within the day to the Feoffee, or proffer him the money, and the Feoffee refuse to receiue it, then may the heire enter into the Lands. And yet the condition is, if the Feoffour pay such a summe such a day, &c. and not making mention in the condition of any payment to be made by his heire, but for this that the heire hath interest of right in the condition, &c. And the intent was but that the money should be payed at such a day set, &c. and the Feoffee hath no more damage to be paied by the heire, then though he were paied by the father, &c. for this cause if the heire pay the money, or tenders the money at the day set, &c. and the other refuseth it, hee may well enter. But if a stranger of his owne head that hath no interest, &c. would tender and pay the money at the day set, then the Feoffee is not bound to receiue it, &c.

Also, it is to bee had in mind, that in such case where such lawfull tender of the money

is

is made, and the Feoffee refuſeth to receiue it, wherefore the Feoffor or his heires do enter, &c. then the feoffee hath no remedy to haue the mony by the common law, for this that it ſhal be counted his owne folly that he refuſed the money when lawfull profer was made of it vnto him, &c.

Alſo, if a feoffement be made with ſuch condition, that if a Feoffee pay to the Feoffor at ſuch a day betweene them limited xx. li. that then the Feoffee ſhall haue the land to him and to his heires, and if he faile to pay the money at the day, &c. that then it ſhalbe lawful to the feoffor, or to his heires to enter, &c. And if after, before the day ſet, the Feoffee ſelleth the Land to another, and thereof make a Feoffement vnto him, in this caſe if the ſecond feoffee will tender the ſumme of money at the day ſet to the Feoffor, and the Feoffor refuſeth it, &c. then hath the ſecond Feoffee eſtate in the land clearly without condition: And the cauſe is, for that the ſecond Feoffee hath intereſt in the condition for ſaluation of his tenancy. And in this caſe it ſeemeth, that if the firſt feoffee after ſuch ſale of Land will tender the money at the day ſet, &c. to the Feoffor, that ſhall be good enough for the ſaluation of the eſtate of the ſecond Feoffee: for this, that the firſt feoffee was priuie to the condition, and ſo the tender of any of them is good enough, &c.

Alſo, if the feffemẽt be made vpon condition, that if the feoffor pay a certaine ſum of money

to

to the feoffee: that then it ſhalbe laſwfull to the feoffor and to his heires to enter, &c. In this caſe if the feoffor die before the day of paimēt, and the heire will tender to the feoffor the money, ſuch tender is void, for this that the time within which the tender ought to be made, is paſt. For when the condition is, that if the feoffor pay the money to the feoffee, this is as much to ſay, that if the feoffor during his life pay the mony to the feoffee, &c. And when the feoffor dieth, thē the time of the tender is paſt. But otherwiſe it is where day of paiment is limited, and the Feoffor dieth before the day, then may the heire tender the money, as is aforeſaid, for this that the time of the tender was not paſt by the death of the feoffor. Alſo it ſeemeth in ſuch a caſe where the feoffor dieth before the day of payment, if the executors of the Feoffor tender the money to the Feoffee at the day of paiment, the tender is good enough. And if the feoffee refuſe this, the heires of the Feoffor may enter, &c. And the cauſe is for this, that the executors repreſent the perſon of the teſtator, &c.

And note wel, that in all ſuch caſes of condition of payment of a certaine ſum in groſſe, touching lands or tenements, if laſwful tender be once refuſed, he that ought to pay the mony is therof quited & clearly diſcharged for ever.

Alſo, if the feoffee in mortgage before the day of paiment that ſhall be made vnto him make his executors & die, and his heire enter into the land

land as he ought. It seemeth in this case that the Feoffor ought to pay the money at the day set to the executors, and not to the heire of the feoffee, for this, ỳ the money at the beginning belonged to the Feoffee in manner as a dutie. And it shall be vnderstood, that the estate was made because of borrowing of the mony of the feoffee, or because of another dutie, & for this the paiment shal not be made to the heir of the Feoffee, as it seemeth. But the words of the condition may be such, that the paiment shalbe made vnto the heire, as if the condition were that the Feoffor pay to the Feoffee, or to his heires, such a summe at such a day, &c. There after the death of the Feoffee (if he die before the day limited) then the paiment ought to be made to the heire at the day set, &c.

Also in such case of a feoffement in Mortgage, a question hath been demanded, in what place the feoffor is bound to tender the money to the feoffee at the day set, &c. And some haue said, that vpon the lād so holden in mortgage, for this, that the condition is dependant vpon the land, and they haue said, that if the feoffor be ready vpon the land, to pay the mony at the feast or day set, and the Feoffee be not at that time there, that then the Feoffor is excluded & discharged of payment of the money, for this, that no default was in him But it seemeth to some men that the law is contrary, and the default is in him: for he is bound to seeke the feoffee, if he be then at that time in any maner

of

of place within the Realme of England. As if a man be bound in an Obligation of xx. li. vpon condition indorced vpon the obligation, that if he pay to him to whom the obligation is made, at such a day x. li. that then the obligation of xx. li. shall lose his force, and shall bee holden for nought: In this case it behooueth him that made the Obligation to seeke him to whom the Obligation is made, if he bee within England, and at the day set, to tender him the said x. li. &c. Or otherwise he forfeiteth the sum of xx. li. comprised within the obligation, and so it seemeth in the other case, &c. And though that some haue said that the condition is dependant vpon the land, yet this is not proued that the feisance of the condition to be performed, ought to be made vpon the land &c. No more then if the condition were, that if the Feoffor should do at such a day, &c an especiall corporall seruice to the Feoffee, not naming the place where the corporall seruice should be done: In this case the feoffor ought to do such corporall seruice at the day limited to the feoffee, in whatsoeuer place in England that the feoffee be, if he will haue aduantage of the condition, &c. And so it seemeth in that other case. And it seemeth to them, that it shall be more properly said, that the estate of the lãd is dependant vpon the Condition, &c. then to say, that the condition is dependant vpon the land: But inquire, &c.

But if a Feoffement in fee be made reser-

ning

uing to the Feoffor an annuall rent, and for default of payment a reentrie, &c. In this caſe it needeth not to the tenant to tender the rent when it is behind, but onely vpon the Land, for this, that this is a rent going out of the land, which is rent ſecke. For if the feoffor be once ſeiſed of his rent, and after he commeth vpon the land, &c. and the rent is denied him, &c. he may haue an Aſſiſe of Nouel diſſeiſin, for though he may enter, becauſe of the condition broken, yet he may chuſe, that is to ſay, to enter, or to haue an Aſſiſe. And ſo is there diuerſity, as to the tender of the rent that is going out of the land, & of tender of another ſumme in groſſe, which is not going out of the land. And therefore it ſhall be ſure and a good thing for them that will make ſuch Feoffement in mortgage, to put and ſet a ſpecial place where the money ſhall be paid. And the more ſpeciall that is put, the better it is for the Feoffour. As if A. enfeoffe B. to haue to him and to his heires vpon ſuch condition, that if A. pay to B. in the feaſt of S. Michaell the Archangell next comming, in the Cathedrall Church of S. Paul of London, within foure houres next before the houre of none of ỳ ſame Feaſt at the rood loft of the North dore within the ſame Church, or any other certain place within the ſame Church: that then it ſhalbe lawful to the foreſaid A. and to his heires to enter, &c. In ſuch caſe he needeth not to ſeeke the feoffee in any other place, but in the place compriſed

in

in the Indenture, nor to be there more longer time then the time ſpecified in the ſame Indenture, for to render or pay the money to the Feoffee.

Alſo in ſuch caſe where the place of paiment is limited, the Feoffee is not bound to receiue the payment in none other place, but in the place ſo limited: But yet if he receiue the payment in any other place, that is good enough, and as ſtrong for the Feoffor, as if the receit had bin in the place ſo limited, &c.

Alſo in this caſe of feoffement in mortgage, if the feoffor pay the feoffee an horſe, or a cup of ſiluer, or a ring of gold, or any other ſuch thing in full ſatisfaction of the money, and the other this receiueth, this is good enough, & as ſtrong as if he had receiued the ſumme of money, though the horſe, or any of the other things be not the twentith part worth in value of the ſumme of money, for this, that the other hath accepted in plaine and full ſatisfaction.

Alſo if a man enfeoffe another in Fee vpon condition, that he and his heires ſhall yeeld to a ſtranger and his heires a yearly rent of xx.s. and if he and his heires faile of payment of this, that then it ſhalbe lawfull to the feoffor and to his heires to enter, this is a good condition: And yet in this caſe, though ſuch a yearely rent be called an annuall rent, this is not properly a rent: for if it ſhall be rent, it ought to be rent ſeruice, rent charge, or rent ſeck, and it is none of them, for if the ſtranger

payment

were seised of this, & after it were to him denied, he shall neuer haue an Assise of this, for this that it issueth not out of any lands, and so the stranger hath no remedie, if any such yearely payment be behind in this case, but that the Feoffor and his heires may enter, &c. and yet if the feoffor and his heires enter for default of payment, then such rent is gone for euer. And so such rent is but a payment set to the tenant and to his heires, that if they will not pay this after the forme of the indenture, ỹ they shall leese their land by the entrie of the feoffor or his heires, for default of payment. And in this case it seemeth that the feoffee & his heires ought to seeke the stranger and his heires if they be in England, because that no place is limited where the payment shall bee made, and because that such rent is not going out of any Land, &c.

And here note well two things, one is, that no rẽt that is properly said rent, may be reserued vpon any feoffement, gift, or lease, but only to the feoffor, or to ỹ donor, or to the lessor, or to their heirs, & in no maner may be reserued to any strãge person. But if 2. tointenãts make a lease by deed indented, reseruing to the one a certain yerely rent, that is good enough to him to whom the rent is reserued, for this that he is priuie to the lease, and not a stranger to this, &c. The second thing is, that no entry or reentey (which is all one) may be reserued nor giuen to any person, but onely to the Feoffor

or

or to the donor, or the lessor, or to their heires, and such entrie may not be alienedd nor granted to any person. For if a man let land to another for terme of life by indenture, yeelding to the lessor & to his heires certaine rent, & for default of payment a reentrie, &c. if after the lessor by a deed grant the reuersion of the land to another in fee, and the tenant for terme of life attorneth, &c. if the rent after be behind, the grantee of the reuersion may distraine for the rent, for this that the rent is incident to the reuersiō, but he may not enter into the land and put out the Tenant as the lessor might, or his heires, if the reuersion had beene continued in them, &c. And in this case the entry is taken away at all times, for the grantee of the reuersion may not enter, Causa qua supra. See Stat. 32.H.8.ca.34. if the lease be by deed indented. And the lessor nor his heires may not enter, for if the lessor may enter, then he ought to bee in his first estate, &c. & that may not be, for this that he hath put from him the reuersion, &c.

Also if there be Lord & tenant, & the tenant make such a lease for terme of life, yeelding to the lessor and to his heires, such yearely rent, & for default of paiment a reentry, &c. if after the lessor die without heire, during the estate of the tenant for terme of life, by which the reuersion commeth to the Lord by way of Escheat, & after the rent of the tenant for terme of life is behind, the Lord may distraine the Tenant for the rent behind, but he may not

enter into the land by force of the condition, &c for this that he is not heire to the Feoffor, &c.

Alſo if land be granted to a man for terme of yeares, vpon condition, that if he pay to the grantor within 2 yeres xl. markes, that then he ſhall haue the land to him and to his heirs, &c. In this caſe if the grantee enter by force of the grant, and after he payeth to the grantor xl. marks within the 2 yeares, yet he hath nothing in the land, but for terme of 2 yeres, for this that no liuerie of ſeiſin was to him made at the beginning, for if he had had franktenement & fee in this caſe, becauſe he hath performed the condition, then ſhould he haue franktenement by force of the firſt grant where no Liuerie of ſeiſin was made thereof, which ſhould be againſt reaſon, &c. But if the grantor had made liuery of ſeiſin to the grantee by force of the graunt, then hath the grauntee the franktenement and the Fee vpon the performance of the ſame condition.

Alſo, if lands be granted to a man for term of 5. yeares, vpon condition that he pay to the grantor within the firſt 2. yeares xl. markes, that then he ſhall haue fee, or els but for terme of 5. yeres, & liuery of ſeiſin is made to him by force of the grant: Now hee hath Fee ſimple conditionall, &c. and if in this caſe the grantee pay not to the grantor the xl. markes within the ſame 2. firſt yeres, thē immediatly after the ſame 2. yeres, the fee and the franktenement is and ſhalbe adiudged to the grantor, for this

that

that the grantor may not after the two years incontinent enter vpon the grauntee, for this that the grantee hath yet title by three yeares to haue and occupie the Land by force of the ſame graunt. And ſo for this, that the condition on part of the grantee is broken, and the grantor may not enter, the law ſhall put the Fee and franktenement in the grauntor: For if the grantee in this caſe make waſt, then after the breaking of the condition, &c. and after the two years the grantor ſhal haue his writ of waſt, and this is a good proofe that the reuerſion is to him, &c. But in ſuch caſe of feoffements vpon condition where the feoffor may enter lawfully for the condition broken, &c. There the feoffee hath the franktenement before the entrie, &c.

Alſo, if a Feoffement be made vpon ſuch condition, that the Feoffee ſhall giue the land to the Feoffor, and to the wife of the Feoffor, to haue and to hold to them and to the heires of their two bodies ingendred, and for default of ſuch iſſue, to remaine to the right heires of the Feoffour: In this caſe if the Husband dye lyuing the wife, before eſtate in the tayle made to him, then ought the feoffee by the law to make eſtate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to ſay, to let the land to the wife for terme of life without impeachment of waſt, the remainder after her deceaſe to the heires ingendred of the body of her

huſband & hers, & for default of ſuch iſſue, the remainder to the right heires of the huſband. And the cauſe why the Leaſe ſhall be made in this caſe to the woman ſole without impeachment of waſt, is for this, that the condition is, that the eſtate ſhalbe made to the huſband and his wife in taile. And if ſuch eſtate had beene made in the life of the huſband, then after the death of her huſbād ſhe hath eſtate in the taile ſole, which eſtate is without impeachment of waſt: and ſo it is reaſon, that if after a man may make eſtate to the intent of the condition &c. that he ſhal make it, &c. thought that ſhe cānot haue eſtate in the taile as ſhe might haue had, if the gift in the taile had bin made to the huſband, & to her in the life of her huſband, &c.

Alſo in this caſe if the huſband & the wife had iſſue & die before the gift in the taile made vnto them, &c. then ought the Feoffee to make eſtate to the iſſue, and to the heires of the father and mother ingendred, and for default of ſuch iſſue, &c. the remainder to the right heires of the huſband, &c. And the ſame Law is in other caſes ſemblable. And if ſuch a Feoffor will not make ſuch eſtate when he is reaſonably required by them that ought to haue eſtate by force of the condition, &c. then may the Feoffor and his heires enter, &c.

Alſo, if a Feoffement bee made vpon condition, that the Feoffee ſhall infeoffe many men, to haue and to hold, to them and to their heires for euer, and all they that ought to

haue

haue estate, dye before any estate made vnto them, then ought the feoffee to make the estate to the heires of him that suruiueth of them, to haue and to hold to him, & to the heires of him that suruiueth, &c.

Also, if a feffement be made vpon condition to enfeoffe another, or to giue in the taile to another, &c. if the feffee before the performing of the cõdition enfeoffe a strange person, or make a leafe for terme of life, then may the Feoffor and his heires enter, &c. for this, that he hath disabled himselfe to performe the cõdition, insomuch that he made estate to another, &c. In such maner it is, if the feffee before the condition performed, let the same Land to a stranger for terme of yeares: In this case the feoffor or his heirs may enter, &c. for this that the feoffee hath disabled himselfe to make estate of the tenements according to that that was in the tenements when the estate thereof was made vnto him, for if he will make estate according to the Condition, &c. then may the Feoffee for terme of yeares enter & put out him to whom the estate is made, &c. and to occupy this during his terme. And many haue said, that if such a feffement be made to a mã sole vpon the same Condition, and before that he hath performed the condition he taketh a wife, thẽ the feoffor or his heire may incontinent enter, for this that if he haue made estate according to the condition, & after dieth, his wife shalbe endowed, & may recouer her dowrie by a writ of

Doſwer, &c. And ſo by taking of a wife, the tenements be put in other plite then they were at the time of the Feoffement vpon condition, for this, that no ſuch woman was doſwable, nor ſhould be endoſwed by the law, &c.

In the ſame maner it is, if the feffor charge the land by his deed of a rent charge before the performing of the condition, or be bound in a ſtatute Staple, or ſtatute Merchant, that in ſuch caſes, the feoffor & his heires may enter, Cauſa qua ſupra. For whoſoeuer commeth to the tenements by the feffement of the feoffee, then the tenements muſt be lyable, and be put in execution by force of the ſtatute aforeſaid. But when the Feoffor or his heires, for the cauſes aforeſaid haue entred ſo as they ought as it ſeemeth, &c. Then all ſuch things that before ſuch entry may trouble or incumber the tenements ſo giuen vpon condition, as touching the ſame tenemẽts be vtterly defeated, &c.

Alſo, if a man make a deed of feoffement to another, & in the deed is no condition, &c. And whẽ the feoffor will make to him liuery of ſeiſin by force of the ſame deed, he maketh liuery of ſeiſin vpon certaine conditions, &c. In this caſe nothing of the tenements paſſeth by the deed, for this, that the condition is not compriſed in the deed, & the feffement is of ſuch force, as if no ſuch deed had bin thereof made, &c.

Alſo if a feffement be made vpon ſuch cõdition, that the feoffee ſhall not alien the land to any man, this condition is void, for this, that

when

when a man is enfeoffed in Lands or Tene-ments, he hath power to alien them to ſome perſon by the law. For if ſuch condition ſhold be good, then the condition putteth him out of all the power that the Law giueth, which ſhould be againſt reaſon, and for this ſuch condition is void. But if the condition bee ſuch, that the feoffee ſhall not alien to one ſuch, naming his name, or to any of his heires, or his iſſues, &c. or ſuch other like, the which con-dition taketh not away all the power of alie-nation of the feoffee, &c. then ſuch condition is good.

Alſo if tenements be giuen in the tayle vp-on ſuch condition, that the Tenaunt in the taile, nor his heires, &c. ſhall not alien in Fee, nor in taile, nor for terme of anothers life, but for their owne liues, &c. ſuch alienation and condition is good: And the cauſe is for this, that when he maketh ſuch alienation and diſ-continuance, he doth contrary to the intent, for which the ſtatute of Weſtminſter the ſe-cond was made, by which eſtatute, the eſtates in the taile be ordained, for it is proued by the words compriſed in the ſame eſtatute, that the intent of the making of the ſame eſtatute was that the will of the donor in ſuch caſes ſhould be obſerued. And when tenant in the taile ma-keth ſuch diſcontinuance, he doth the contrary to that, &c. And alſo in eſtates in the taile of any tenements when the reuerſion of the fee ſimple is in another perſon, when ſuch diſcon-tinuance

tinuance is made, then the fee simple in the reuersion, or the fee simple in the remainder is discontinued, and for that that the Tenant in the taile shall doe no such thing against right, such conditions are good, as is aforesaid, &c.

Also a man may giue land in the taile vpon such condition, that if the tenant in the taile or his heires alien in fee, or in taile, or for terme of anothers life, &c. And also, that all the issues cõming of the tenant in the taile be dead without issue, that then it shalbe lawful to the donor and to his heirs to enter, &c. & by such way the right of the taile may be saued after such discontinuance to the issue in the taile if there be any, so that by way of entry of the donor or of his heirs, the taile shal not be defeated by such condition, and yet if the tenant in the taile in this case, or his heires make any discontinuance, &c. hee in the reuersion or his heires after this that the taile is determined for default of issue, &c. may enter into the land by force of the same cõdition, & shal not be driuen to sue a writ of Formedon in the reuerter.

Also, a man may not plead in an action, that estate was made in fee, in the taile, or for term of life vpon condition, but if he vouch a record therof, or shew a writing vnder seale, prouing the same condition, for it is a common eruditi-on and learning, that a man by pleading shall not defeat any estate of franktenemẽt by force of any such condition, vnles he shew the proofe of such condition in writing, &c. except it be in

some

some especiall case: but of chattels reals, as of a lease made for terme of yeares, or of grants of wards made by wardens in chiualrie, and of such other, &c. a man may plead that such gifts or grants were made vpon condition, &c. without shewing of any writing of condition. And in the same manner a man may do of gifts and grants of Chattels personals, and of contracts personals, &c.

Also, though that a man in some action may not plead a condition that toucheth & concerneth franktenement without shewing of writing thereof, as it is aforesaid, yet a man may be holpen vpon such condition by the verdict of 12 men taken at large in Assise of disseisin, or in some other Action where the Justices will take the verdict of the twelue Jurors at large. As put the case that a man seised of certaine land in Fee, letteth the same Land for terme of life without deed, vpon condition to yeeld to the Lessour a certaine rent, and for default of payment a recntrie, &c. by force of which the lessee is seised as of a franktenement, and after the rent is behind, by which the lessor entreth into the land, and after the lessee arraigneth an Assise of Noue disseisin of the land against the lessor, the which pleadeth that he doth no wrong, ne no disseisin, and vpon this the Assise is taken.

In this case the Recognitors of the Assise may say and yeeld to the Justices their verdict at large vpon all the matter, as to say, that the defen-

defendant was ſeiſed, & ſo ſeiſed, let the ſame Land to the plaintife for terme of his life, to yeeld to the leſſor ſuch annuall rent payable at ſuch a feaſt, & vpon ſuch condition, that if the rent be behind at any ſuch feaſt that it ought to be payed, that then it ſhall be lawfull to the leſſor to enter, &c. by force of which Leaſe the plaintif was ſeiſed in his demeſne as of frank tenement, & after the rent was behind at ſuch a feaſt, in ſuch a yeare, &c. for which the leſſor entred into the land vpon the poſſeſſion of the leſſee, & praieth the diſcretion of the Juſtices, if this be a diſſeiſin done by the plaintif or not. And then for this that it appeareth to the Juſtices, that this was no diſſeiſin done to the plaintife, inſomuch that, that the entrie of the leſſor was lawful vpon him, ỹ Juſtices ought to giue iudgement that the plaintife ſhall take nothing by his writ of Aſſiſe. And ſo in ſuch caſe the leſſor ſhall be holpen, & yet no writing was euer made of the condition, for aſwell as the Iurors may haue knowledge of the leaſe, in the ſame maner may they haue knowledge of the condition rehearſed in the leaſe. In the ſame maner it is of a feoffement in fee, or a gift in the taile vpon condition, though neuer writing were made therof, &c. And as it is ſaid of a verdict at large in Aſſiſe, in the ſame maner it is of a writ of Entre founded vpon diſſeiſin, & in all other actions where the Juſtices will take a verdict at large, there where the verdict at large is made, the nature of the matter is

put

put in the iſſue. Alſo in ſuch caſe where the Enqueſt may ſay their verdict at large, if they will take vpon them the knowledge of the law vpon the matter, they may ſay their verdict generall, as it is put in their charge, as in the caſe aforeſaid, they may well ſay that the leſſor diſſeiſed not the leſſee if they will, &c.

Alſo in the ſame caſe, if the caſe were ſuch, that after this that the Leſſor hath entred for default of payment, &c. that the Leſſee had entred vpon the leſſor, and him diſſeiſed, In this caſe if the leſſor arraigneth an aſſiſe againſt the leſſee, the leſſee may barre him of his aſſiſe, for he may plead againſt him in bar, how the leſſor that is plaintife made a leaſe to the defendant for terme of life, ſauing the reuerſion to the plaintife, the which is a good plea in barre, inſomuch that he knowledgeth the reuerſion to be to the plaintife, and in this caſe he hath no matter to help him, but the condition made vpon the leaſe, & that he may not plead, for that he hath no writing, and inſomuch that he may not anſwer to the barre, he ſhall be barred. And ſo in this caſe ye may ſee, that a man is ſeiſed, & he ſhall haue Aſſiſe, and yet if the leſſee be plaintife, and the leſſor defendant, he ſhall barre the leſſee by verdict of the aſſiſe. But in this caſe where the leſſee is defendant, if hee will not plead the ſaid plea in barre, but plead no wrong ne diſſeiſin, then the leſſor ſhall recouer by Aſſiſe, *Cauſa qua ſupra.*

And becauſe ſuch conditions be moſt commonly

monly put & ſpecified in deeds indented, ſome little thing ſhall be ſaid here (to thee my ſon) of indẽtures, or of a deed Poll containing cõditions. And it is to wit, ỹ if the indenture be bipartite, or tripartite, or quadripartite, all the parts of the Indenture be but one deed in the law, & euery part of the Indenture is of himſelfe of as great force & effect, as all the parts together. And the making of Indẽtures is in 2. manners. One is to make them in the third perſon, another maner is to make them in the firſt perſon. The making of the third perſon is as in ſuch forme. This Indenture made betweeñ A. of B. of the one part, & C. of D. of the other part, witneſſeth, that the foreſaid A. of B. hath giuen & granted, & by this preſent deed indẽted, hath cõfirmed to the foreſaid C. of D. ſuch land, To haue, &c. vpon the condition, &c. In witnes wherof the parties beforeſaid interchangeably haue put to their ſeals: Or els thus, In witnes wherof to ỹ one part of this indẽture remaining with the ſaid C. of D the foreſaid A. of B. hath put to his ſeale, & to the other part of the ſaid Indenture remaining with ỹ ſaid A. of B. the ſaid C. of D. hath put to his ſeale, giuẽ, &c Such indentures are called indẽtures made in the third perſon, for this that the verbes be in the third perſon, & ſuch forme of indẽture is the more ſure making, for that it is more cõmonly vſed. The making of indentures in the firſt perſon is of ſuch forme. To all true Chriſtian people to whom this pre-

present writing indented shall come, A. of B. gresting in our lord euerlasting. Know ye me to haue giuen & granted, and by this my present deed indented to haue confirmed to C. of D. such land, &c. Or else thus: Know all men that be present, and them that be to come, that I. A. of B. haue giuē & granted, & by this my present deed indented haue confirmed to C. of D. such land, &c. to haue, &c. vpon the condition following: In witnes wherof as well I the said A. of B. as the aforesaid C. of D. to these Indentures interchangeably haue put to our seales: or els thus: In witnes whereof to one part of this Indēture I haue put to my seale, & to the other part of the same Indenture the foresaid C. of D. hath put to his seale, &c.

And it seemeth that such an indenture made in the first person, is as good in the law as the Indenture made in the third person, when both parties haue thereto put their seales, for in the Indenture made in the third person, or in the first person, if mention be made that the grantor hath set his seale only, & not the grantee, then is the Indenture only the deed of the grantor. But where mention is made that the grantes hath set his Seale to the Indenture, &c. then is the Indenture aswell the deed of the grantor, as the deed of the grantee, and thus it is the deed of both, and also euery part of the indenture is the deed of both parties in such case, &c.

Also if estate be made by Indenture to a man

man for term of his life, the remainder to another in Fee vpon condition, &c. and if the Tenant for terme of life hath ſet his ſeale to one part of the Indenture, and after dieth, and he in the remainder, &c. entreth by force of his remainder, in this caſe he is holden to performe all the conditions compriſed within the Indenture, as the tenant for terme of life ought to do in his life, and yet he in the remainder neuer ſealed any part of the Indenture: But the cauſe is, that inſomuch that hee entreth and agreeth to haue the Land by force of the Indenture, he is holden to performe the condition within the Indenture, if he will haue the Land, &c.

Alſo if a Feoffement be made by deed Poll vpon condition, &c. And for this that the condition is not performed, the Feoffor entreth and happeth the poſſeſſion of the deed Poll, if the feoffee bring an action of that entry againſt the feoffor, it hath bin a queſtion, if the feoffor may plead the Condition, &c. by the Deed Poll againſt the feoffee: And ſome haue ſaid nay, inſomuch that it ſeemeth vnto them, that a deed Poll, and the property of the ſame deed appertaineth to him to whom the deed is made, and not to him that made the deed, and inſomuch that ſuch a deed appertaineth not to the Feoffor, it ſeemeth to them that he may not plead this deed, &c. And other haue ſaid the contrary, and haue ſhewed diuers cauſes. One is, if the caſe be ſuch, that in the action be-

betweene them the feffee plead the same deed, & shew this to the court: In this case insomuch that the deed is in the Court, the feoffor may shew in the Court, how in the deed be diuers conditions to be performed of the part of the feoffee, and for this that they be not performed, he entred, &c. and thereto he shalbe receiued: by the same reason when the feoffor hath the deed in hand, & sheweth it to the court, he shalbe wel receiued to plead of this, &c. and namely when the feoffor is priuy to the deed, for he ought to be priuy to the deed when he made the deed.

Also if two men make or do a trespas to an other, the which releaseth to one of them by his deed all actions personals, and notwithstanding he sueth an action of trespas against the other, the defendant may well shew that the trespas was done by him and another his fellow, and that the plaintife by the deed that he shewed forth releaseth to his fellow all actions personals, and yet such deed appertaineth to his fellow, and not vnto him, but for this that he may haue aduantage by the deed, if he will shew the deed to the Court, he may well plead, &c. Therefore by the same reason in the other case, when the feoffor ought to haue aduantage by the condition comprised within the deed Poll.

Also, if the feoffee gaue or granted the deed Poll to the Feoffor, such grant shall be good, and then the deed, and the property of the deed appertaineth to the Feoffour. And when the

Feoffor hath the deed in hand, and pleadeth it to the Court, it ſhall be rather vnderſtood that he came to the deed by a lawful meane than by a tortious meane. And ſo it ſeemeth that hee may well plead ſuch a deed poll, that cõprehendeth condition, &c. if he haue the deed in hand, &c. Ideo ſemper quære de dubijs, quia per rationes peruenitur ad legit̃ rationem.

Eſtates that men haue vpon Condition in the law, be ſuch eſtates that haue Condition in the Law annexed to them, though it be not ſpecified in writing, ſo as a man grant by his deed to another the office of a Parkerſhip of a Parke, to haue and to occupie the ſame office for terme of his life, the eſtate that he hath in the office, is vpon condition in the Law, that is to ſay, that the Parker well and truly ſhall keepe the parke, and doe that that to the office appertaineth to doe: or otherwiſe that it ſhall be lawfull to the grantor and to his heires to put him out, and to grant that to another if he will, &c. And ſuch condition as is vnderſtood by the law to be annexed to ſome thing, is as ſtrong as if the Condition were ſet or put in writing. In the ſame manner it is of grants of offices of Stewards, Conſtables, Bedies, Bailifes, and other officers. But if ſuch office be granted to a man to haue and to occupy by him or by his deputy, then if the office be occupied by him or by his deputy, as it ought by the Law to be occupied, this ſufficeth for him, or els the grantor or his heires may put him out

as

as is aforesaid.

Also, estates of lands or tenements may be vpon condition in the Law, though that vpon the estate made, there was no rehearsall made of the condition: As put the case that a lease be made to the husband and his wife, to haue and to hold to them during the couerture betweene them, in this case they haue estate for terme of their two liues vpon conditiõ in the law, that is to say, if one of thẽ die, or if diuorce be made betweene them, that then it shalbe lawful to the lessor, & his heirs to enter, &c. & that they haue estate for terme of their two liues, it is proued thus: Euery man that hath estate of franktenement in any lands or tenements, either he hath estate in fee, or in fee taile, or for terme of life, or for terme of anothers life, & yet by such lease they haue franktenement, but they haue not by the grant, fee, nor taile, nor for terme of anothers life, Ergo they haue estate for terme of their two liues, but this is vpon condition in the law in forme aforesaid. And in this case if they make waste, the lessor shall haue against them a writ of waste, supposing by his writ Quod tenent ad terminum vitæ, &c. but in his plee he shall declare how & in what maner the lease was made. In the same maner it is, if an abbot make a lease to a man, to haue & to hold during the time the lessor is Abbot: In this case the lessee hath estate for terme of his owne life, but this is vpon condition in law, that is to say, if the abbot die, or resign, or be deposed,

it shalbe lawfull to his successors to enter, &c.

Also, a man may see in the Booke of Assises, An 38. E. 3. a plee of assise in this forme that insueth. Assise of Nouel disseisin was sometime brought against one B. that pleadeth to the assise, & was found by verdict that the ancestor of the plaintif deuised the tenemẽts to be sold by the defendant ꝑ was his executor to make distribution of the money for his soule. And it was found, that a man after the death of the testator tendred him a certaine sum of money for the tenements, but not to the value, & that the executor after held the Tenements in his owne hand by two yeres, to the intent to haue sold the tenements more dearer to some other: And it was found that he had all the while after taken the profits of the tenements to his owne vse, without any thing doing for ꝑ soule of the dead. Mombray, the executor in such case is holden by the law to make such sale as soone as he may after the death of the testator, & it is found that he refused to make the sale, & so the default was in him: And also by force of the deuise he was holden to haue put all the profits of the said tenements to the vse of the dead, and it is found that he hath taken them to his owne vse, and so another default is in him, wherfore it was adiudged that the plaintife should recouer, &c. And so it appeareth in the said iudgemẽt, that by force of ꝑ said deuise the executor had none estate or power in the tenements, but vpon condition in the law, &c.

And

And in ſuch caſes it needeth not to haue ſhewed any deed, rehearſing the condition, &c. Ex paucis dictis intendere plurima poſſis. More ſhalbe ſaid of conditions in the chapter of deſcents that take away entrie, & in y chapter of Releaſes, & in the chapter of Diſcontinuance.

Deſcents.

DEſcents that take away entries be in 2. maners, that is to ſay, where the deſcent is in Fee, or in Fee taile. Deſcent in fee that taketh away entrie is, if a man ſeiſed of certains lands or tenements, is diſſeiſed, and the diſſeiſor hath iſſue and dyeth of ſuch eſtate ſeiſed: Now the tenements deſcend to the iſſue of the diſſeiſor by courſe of the Law, as heire vnto him. And for this that the Law putteth the lands or tenements vpon the iſſue, & the iſſue cõmeth to the tenements by courſe of the law, and not of his owne deed, the entrie of the diſſeiſee is taken away, & he is thereof put to his writ of Entre vpon diſſeiſin againſt the heire of the diſſeiſor to recouer the land.

Deſcent in the taile that taketh away entrie is, if a man be diſſeiſed, and the diſſeiſor giueth the ſame Land to another in the taile, and the tenant in the taile hath iſſue and dyeth ſeiſed of ſuch eſtate, and the iſſue entreth, in this caſe the entrie of the diſſeiſee is taken away, and he is put to ſue againſt the iſſue of the tenant in the taile, a writ of Entrie vpon

diſſeiſin, &c.

And note well, that in ſuch deſcents that take away entries, it behoueth that a man die ſeiſed in his demeſne as of fee, or of fee taile, for dying ſeiſed for terme of life, or for terme of an others life, ſhal neuer take away the entry, &c.

Alſo, a deſcent of reuerſion, or of remainder, ſhall neuer take away entrie, &c. ſo that in ſuch caſes that take away entries by force of deſcents, it behoueth that he that died ſeiſed haue fee & franktenement at the time of his dying, or elſe ſuch deſcent taketh not away entrie.

Alſo as it is ſaid of deſcents that deſcēd to y iſſue of him that dieth ſeiſed, &c. the ſame law is where they haue no iſſue, but the tenemēts deſcend to the brother, or the ſiſter, or to the vncle, or to ſome other coſin of him, y dieth ſeiſed, &c.

Alſo, if there be Lord and Tenant, and the Tenant be diſſeiſed, and the diſſeiſor alieneth to another in fee, & the alienee dyeth without heire, and the Lord entreth as in his eſcheat: In this caſe the diſſeiſee may enter vpon the Lord, for this, that the Lord commeth not to the land by deſcent, but by eſcheat.

Alſo, if a man ſeiſed of certain land in fee, or in fee taile vpon conditiō to yeeld certain rent, or vpon other condition, though that ſuch tenant ſeiſed in fee, or in fee taile, die ſeiſed, yet if the conditiō be brokē in their life, or after their deceaſe, &c. this taketh not away the entrie of the feffor, nor of the donor, or of their heirs, for this that the tenancy is charged with the condition,

dition, and the eſtate of the tenancy is conditionall in whoſe hands ſoeuer the tenancy ſhall come, &c.

Alſo, if ſuch a tenant vpon condition be diſſeiſed, & the diſſeiſor die therof ſeiſed, & the land deſcēdeth to y heire of y diſſeiſor, now y entrie of the tenāt vpon condition that was diſeiſed is taken away, but if the condition be broken &c. thē may the feoffor or the donor y made the eſtate or their heires enter, &c. Cauſa qua ſupra

Alſo, if a diſſeiſor die ſeiſed, & his heire enter, &c. the which endoweth the wife of the diſſeiſor of the third part of the tenements: in this caſe, as to the 3. that is aſſigned to the wife in dower, incontinent anon after that the wife entreth and hath poſſeſſion of the ſame third part, the diſſeiſee may lawfully enter vpon the poſſeſſion of the wife in the ſame third part. And the cauſe is for this that when the wife hath her dower ſhe ſhall be adiudged in, rather immediatly by her huſband than by the heire, & ſo as to the franktenement of the ſame third part, the deſcent is defeited. And ſo ye may ſee how before the dowment the diſſeiſee might not enter into any part, &c. and after the dowment he may enter vpon the wife, and yet he may not enter vpon the other two parts that the heire of the diſſeiſor hath by deſcent, &c.

Alſo, if a woman be ſeiſed of Land, in Fee, whereof I haue right and title to enter, if the woman take an Huſband and haue iſſue betweene them, and after the wife dyeth ſeiſed,

and after that the huſband dieth, and the iſſue entreth, &c. in this caſe I may enter vpon the poſſeſſion of the iſſue, for this that the iſſue commeth not to the tenements immediatly by deſcēt after the death of his mother. Añ 9. H. 7. fo 24 it is holden contrary.

Alſo, if a diſſeiſor infeoffe his father, & the father entreth & dyeth of ſuch eſtate ſeiſed, by which the tenements deſcend to the diſſeiſor, as to the ſonne and heire, &c. In this caſe the diſſeiſee may well enter vpon the diſſeiſor, notwithſtanding the deſcent, for this, that as to the diſſeiſin, the diſſeiſor ſhalbe adiudged in but as the diſſeiſor, notwithſtanding the deſcent.

Alſo, if a man ſeiſed of certaine Land in his demeane as of fee, hath iſſue two ſonnes & dyeth, & the yonger ſonne entreth by abatement in the Land, the which hath iſſue, and of this dyeth ſeiſed, and the tenements deſcend to the iſſue, and the iſſue entreth into the Land: In this caſe the elder ſonne or his heires may enter by the Law vpon the iſſue of the younger ſonne, notwithſtanding the deſcent, for this, that when the yonger ſon abated in the land after the death of his father, before any entrie of the elder, the law entendeth that he entreth in claiming as heire vnto his Father, and for this that the elder brother claymeth by the ſame title, that is to ſay, as heire vnto his father, he & his heires may enter vpon the iſſue of the yonger brother, notwithſtanding the deſcent, &c. for this, that they claime by one ſelf title,

title. And in the same maner it shall be if there be many descents from one issue to another issue of the yonger sonne, &c. But in such case if the father were seised of certain land in Fee, and hath issue two sonnes and dyeth, and the elder sonne entreth and is seised, &c And after the yonger sonne disseiseth him, by which disseisin he is seised of Fee, and hath issue, and of such estate dyeth seised, then the elder brother may not enter, but is put to his writ of Entre vpon disseisin for to recouer the land And the cause is for this that the yonger brother commeth to the Tenements by a wrong disseisin made vnto his elder brother, & for that wrong the Law may not intend that he claimeth as heire to his father, no more than if a strange person had disseised the elder brother that neuer had any title, &c. And so may ye see the diuersitie, where the yonger brother entreth after the death of his father, before any entry made by the elder brother in such case, &c. and where the elder brother entreth after the death of his father, and is disseised by the yonger brother, &c. In the same manner if a man seised of certaine land in Fee, hath issue two daughters, & dieth, & the elder daughter entreth in the land, claiming all the land to her, and thereof onely taketh the profits, and hath issue and dieth seised by which her issue entreth, which issue hath issue and dyeth seised, and the second issue entreth, &c. & sic vltra, yet the yonger daughter and her issue, as to the halfe may enter vpon

euery

euery iſſue of the elder daughter, notwithſtanding ſuch deſcent, for this that they claime by one ſelfe title, &c. But in ſuch caſe if both two ſiſters come into the Land to enter after the death of their father, & therof were ſeiſed, and after the elder ſiſter therof diſſeiſed the yonger ſiſter of that that to her belongeth, & thereof is ſeiſed in fee, & hath iſſue, & of ſuch eſtate dyeth ſeiſed, by which the tenements deſcend to the iſſue of the elder ſiſter, then the yonger ſiſter or her heires may not enter, &c. Cauſa qua ſupra.

Alſo, if a man ſeiſed of certaine Land hath iſſue two ſonnes, and the elder brother is baſtard, and the yonger brother Mulier, and the father dieth, and the baſtard entreth and claimeth as heire vnto his father, and occupieth the land all his life without any entrie made vpon him by the Mulier, and the baſtard hath iſſue and dieth of ſuch eſtate ſeiſed in fee, and the land deſcendeth to his iſſue, and his iſſue entreth, &c. in this caſe the Mulier is without remedy, for he may not enter, nor he ſhall haue no action for to recouer the land, for this that it is an ancient Law in ſuch caſe vſed. But it hath beene an opinion of ſome men, that that ſhall be vnderſtood where the Father hath a ſonne a baſtard by a woman, & after he weddeth the ſame woman, and after the eſpouſels he hath iſſue by the ſame woman a ſonne or a daughter Mulier, & the father dieth, &c. if ſuch a Baſtard enter, &c. and hath iſſue, and dyeth ſeiſed, &c. Then ſhall the iſſue of ſuch a baſtard

haue

haue the land clearly to him, as it is aforesaid, &c. and not any other Bastard borne of the mother that was not espoused to his Father, and this is a good and reasonable opinion: For such a bastard borne before the espousels solemnized betweene his father and his mother, by the Law of holy Church is Mulier, though that by the Law of the Land he is a Bastard borne, and so he hath colour of entrie as heire to his Father, for this that he is by one law Mulier, that is to say, by the Law of holy Church. But otherwise it is of a bastard that hath no manner of colour to enter as heire, insomuch that he may not in no Law be said Mulier, &c. For such a Bastard is said Quasi nullius filius. But in such case aforesaid, where the bastard entreth after the death of his Father, and the Mulier putteth him out, and after the Bastard disseiseth the Mulier, and hath issue, and dyeth seised, and the issue entreth, then the Mulier may haue a writ of Entre vpon disseisin against the issue of the Bastard, and recouer the land, &c. And so may ye see the diuersitie where such a Bastard continueth his possession all his life without any interruption, and where the mulier entreth and interrupted the possession of such a bastard.

Also, if a child within age haue title & cause to enter into any Lands or tenements vpon another that is seised in Fee, or in Fee tayle, of the same lands or tenements, if such a man

that

that is ſo ſeiſed dye of ſuch eſtate ſo ſeiſed, and the tenements deſcend to his iſſue, during the time that the child is within age, ſuch deſcent ſhall not tolle the entrie of the child, but he may enter vpon the iſſue that is in by deſcent, &c. for this that no laches ſhalbe adiudged in a child within age in ſuch caſe, &c.

Alſo, if the huſband & his wife, as in right of the wife haue title and right to enter in the tenemẽts that another hath in fee, or in fee tail, & ſuch a tenant dieth ſeiſed, &c. In ſuch caſe the entrie of the huſband is taken away vpon the heire that is in by deſcent. But if the huſband dye, then the wife may well enter vpõ the iſſue which is in by deſcent, for this y the laches of the huſband ſhall not turne to the wife & to her heires in preiudice nor in damage in ſuch caſe, but that the wife & her heires may well enter where ſuch deſcẽt is during the couerture, &c.

Alſo, if a man that is not of whole mind, that is to ſay in Latin, Qui non eſt compos mentis, hath cauſe to enter in any ſuch Tenements, if ſuch deſcẽt vt ſupra be had in his life during the time that he was out of his mind, and after dye, his heires may well enter vpon him that is in deſcent. And in this may ye ſee a caſe that the heire may enter, and yet his anceſtor that had the ſame title may not enter, for he that was out of his mind at the time of ſuch deſcent, if he will enter after ſuch a deſcẽt, if an action vpon this be ſued againſt him, he hath nothing for him to plead, or to help him, but to

ſay

say that he was out of mind at the time of such descent, &c. And he shall not be receiued to say this, for this that no man of ful age shal be receiued in any plee by ẏ law to disable his own person. But the heire may wel disable the person of his ancestor for aduantage of the heire in such case, for this, that no laches may be adiudged by the law in him that hath no discretion in such case. And if such a man out of his mind make a feoffement, &c. he may not enter, ne haue a writ called Dū non fuit cōpos mentis, &c. Causa qua supra. But after his death his heire may wel enter, or haue the same writ Dum non fuit cōpos mentis at his election, &c.

Also, if I be disseised by a child within age that alieneth to another in fee, and the alienee dieth seised, and the tenements descend to his heire, the child being within age, mine entrie is taken away. But if the child within age enter vpon the heir that is in by descent, as he wel may, for this that the descent was during his nonage, then I may well enter vpon the disseisor, for this, that by his entry he hath defeated and adnulled the discent.

And in the same manner it is, where I am disseised, & the disseisor maketh a feoffement in fee vpon conditiō, &c. & the feoffee dieth of such estate seised, &c. I may not enter vpon the heire of the feffee: But if the condition be broken, so that by such cause the feoffor entreth vpon the heire, now may I wel enter, for this that whē the feoffor or his heires enter for the condition

bro=

broken, the deſcent is vtterly defeated.

Alſo, if I be diſſeiſed, and the diſſeiſor hath iſſue and entreth into Religion, by force of which the Lands deſcend to his iſſue, in this caſe I may well enter vpon the iſſue, and yet there was a deſcent: But for this that ſuch deſcent commeth to the iſſue by the Fathers deed, that is to ſay, for this that he entred into Religion, &c. and his deſcent commeth not to him by the deed of God, that is to ſay, by death, &c. mine entry is congeable and lawfull, for if I arraign an Aſſiſe of Nouel diſſeiſin againſt my diſſeiſor, though he after enter into religion this ſhall not abate my writ: but my writ this notwithſtanding ſhall abide in his force and ſtrength, and my recouery againſt him ſhall be good. By the ſame reaſon the diſcent that came to his iſſue by his owne deed may not put me from mine entrie, &c.

Alſo, if I let to a man certaine Lands for terme of xx. yeares, and another diſſeiſeth me, and putteth out the termor, and dyeth ſeiſed, and the Tenements deſcend vpon his heire: I may not enter, and yet the Leſſee for terme of yeares may well enter, for this that by his entrie he putteth not out the heire that is in by deſcent from the Franktenement that vnto him deſcended, but onely claimeth to haue the tenements for terme of yeres, the which is no expulſing of the Franktenement of the heire that is in by deſcent. But otherwiſe it is where my tenant for terme of life is diſſeiſed,

&c.

&c. Causa qua supra.

Also, it is said that if a man be seised of tenemẽts in fee by occupation in time of warr, and dieth thereof seised in time of warr, & the tenemẽts descend to his heire, such descent putteth out no man of his entry. And of this a man may see a plee in a writ of Ayel, Añ 7. E 2.

Also, that no dying seised (where all the tenements come to another by succession) shall take away the entry of any person, &c. For of Prelats, Abbots, Priors, Deanes, or Parsons of Churches, &c. though that there were 20. successors, this putteth no man from his entry, &c. More shalbe said of discents in the chapter of Continuall claime, &c. See the statute 32. H. 8. cap. 33.

Continuall claime.

COntinuall claime is, where a man hath right & title to enter in any lands or tenemẽts whereof another is seised in fee, or in fee taile, if he that hath title to enter make continuall claime to the lands & tenements, before the dying seised of him that holdeth the tenements: Then though such a tenant die thereof seised, and the lands and tenements descend to his heire, yet may he that hath made such claime, or his heires, enter into the lands and tenements descended, because of the continuall claime made, notwithstanding such descent. As in case a man be disseised, and the disseisee ma-

maketh continuall claime to the tenements in the life of the disseisor, though the disseisee dye seised in fee, and the land discendeth vnto his heires, yet may the disseisee enter vpon the possession of the heire, notwithstanding such descent.

In the same maner it is, if tenant for terme of life alien in fee, he in the reuersion, or hee in the remainder may enter vpon the alienee. And if such alienee die seised of such estate without continuall claime made to the tenements before the dying seised of the alienee, & the tenements because of the dying seised of the alienee discend vnto the heire of the alienee, then may not he in the reuersion, nor he in the remainder enter. But if he in the reuersion, or he in the remainder that hath cause to enter vpon the alienee, made continuall claim to the tenements before the dying seised of the alienee, then such a man may enter after the death of the alienee, as well as he might in his life, &c.

Also, if Lands be let vnto a man for terme of his life, the remainder vnto another for terme of life, the remainder vnto the third in Fee, if the tenant for terme of life alien to another in Fee, and he in the remainder for terme of life maketh continuall claime vnto the land before the dying seised of the alienee, & after the alienee dieth, &c. and after he in the remainder for terme of life dieth before any entrie made by him: In this case he in the remainder in Fee, may enter vpon the heire of the alienee, because

because of continual claime made by him that had the remainder for term of life, for this that such right that he hath to enter, shall goe and remaine to him in the remainder after him, insomuch that he in the remainder in fee may not enter vpon the alienes in fee during the life of him in the remainder for terme of life, and because he might not make continual claime, for none may make continual claime but when he hath title to enter. But it is to be shewed to thee my child how & in what maner continuall claime shalbe made: & to learne this, 3. things there be to be vnderstood. The first thing is, if a man haue cause to haue any lands or tenements in diuers townes within one Shire, if he enter in any parcell of the lands or tenements that be in one towne, in the name of all the lands or tenements to which he hath right to enter within al the towns in the same shire by such entry he hath as good possessiō & seisin of such lands & tenements wherof he hath title to enter, as if he had entred into euery parcell, and this seemeth great reason, for if a man will infeoffe another without deed, of certaine lāds or tenemēts that he hath in many townes within one shire, & he will deliuer seisin to the feoffee of parcell of the tenements within one towne in the name of all the lands & tenemēts that he hath in the same towne, & in all y other townes, &c. all the said tenements, &c. shall passe by force of the said Liuery of seisin to him to whom such feoffement in such maner is made:

And yet he to whō such liuery of seisin is made hath no right to al the lands & tenemēts in al the townes, but by reason of the liuery of seisin made of parcell of the lāds or tenemēts in one towne, à multo fortiori it seemeth good reason, that when a man hath title to enter into lands or tenemēts in diuers townes within one shire before entrie by him made, that by the entry of him made in parcel of the tenements in one town, in the name of all the lands & tenements to the which he hath title to enter within the same shire, this is a seisin of all in him, and by such entry he hath possession and seisin in deed, as if he had entred into euery parcell, &c.

The second is to vnderstand, that if a man hath title to enter into any lands or tenemēts, if he dare not enter into the same lands or tenements, nor in any parcel therof for doubt of beating, or for doubt of mayming, or for doubt of both, if he approch as nigh the tenements as he dare for such doubt, and claim by words the Tenements to be his, incontinent by such claime he hath a possession & seisin in the tenements, aswel as if he had entred indeed though he had neuer possessiō or seisin of the same lāds or tenements before the said claime. And that the law is such, it is well proued by a plee of an assise in the booke of Assises, Añ 38. E. 3. P. 23. the tenor of which ensueth in this forme.

In the county of Dorset before the Iustices it was found by verdict of Assise, that the plaintife which had right by descent of heri-

tage,

tage, to haue the tenemẽts put in plaint at the time of the death of his ancestor, which was dwelling in the towne where the tenements were, and by word claimeth the tenements among his neighbours, but for doubt of death he durst not approch vnto the tenements, bringeth an assise, and vpon the matter found, it was awarded that he should recouer.

The third thing is, to vnderstand within what time, and by what time the claim that is said cõtinual claime shal serue & help him that made the claime & his heire. And as to this it is to wit, that he that hath title to enter, when he wil make his claime, if he dare approch vnto the land, then it behoueth him to go vnto the land, or to parcell of it, & make his claime: And if he dare not approch vnto the land for dread of beating, maiming, or death, then it behoueth him to go, & to approch as nigh as he dare toward the land, or parcel therof, & make his claim. And if his aduersary that occupieth the land die seised in fee, or in fee taile, within a yere & a day after such claime made, by which the tenements descend vnto his sonne, as heire vnto him, yet may he that made the claime, enter vpon the possessiõ of the heire. But in this case after the yeare & the day that such claime was made, if none other claime be made, if the father thẽ die seised the morrow after the yere & the day, or at another day after, &c. then may not he y made the claim enter. And therefore if he y made the claim wil be sure alway that his

entry shal not be taken away by such descent, it behoueth him within the yeare and the day after the first claime, to make another claime, in the form aforesaid: And within the yere and the day after the second claime, to make the 3. claime in the same maner: & within the yeare & the day after the third claime to make another claime, &c that is to say, to make another claim within euery yere & day next after euery claim made during the life of his aduersary, & then at what time that his aduersary die, his entry shall not be taken away by descent. And such claime made in such maner, is most commonly taken and called continuall claime of him that made the Claime. But yet in case aforesaid, where his aduersary dieth within the yere and the day next after the first claime, this is in the law a continuall claime, insomuch that his aduersary died within the yeare & day after the same claime, for it is no need for him that made the claim to make any other claim, but at what time he wil within the same yere and the day, &c. Also if his aduersary be disseised within the yere & day after the claim, and the disseisor dieth therof seised within the yere and the day, &c. This dying seised shall not hurt him that made the claime, but that he may enter, &c. For whosoeuer he be that died seised within y yeer & the day after such claime, that shall not hurt him that made the claime, but that he may enter though there were many dyings seised, and many descents within the yere and the day, &c

Also

Also if a man be disseised, and the disseisor die seised within the yeare and the day next after the disseisin done, whereby the tenements descend to his heire, in this case the entrie of the disseisee is taken away, for the yeare & the day that should helpe the disseisee in such case, &c. shall not be taken from the time of the title of entry growne vnto him, but only frō the time of the claime by him made in maner aforesaid: and for that cause it shal be good for such a disseisee for to make his claime, &c. in as short time as he may after the disseisin, &c.

Also, if such a disseisor occupy the lād by xl. yeres without any claime made by the disseisee &c. & the disseisee by little space before the death of the disseisor make claime in the forme aforesaid, if so it fortune that within a yere & a day after such claime the disseisor die seised, &c. the entry of the disseisee is congeable, & for this it shalbe good for such a man that made no claim that hath title to enter, &c. whē he heareth that his aduersary lieth sick to make his claime, &c.

Also, as it is said in the cases put before, where a man hath title to enter because of a disseisin, &c. The same Law is where a man hath right to ēter because of any other title, &c.

Also in the said Presidents may yee know my child two things. One is, where a man hath title to enter vpon any tenant in taile, if he make any such claime vnto the land, &c. then is the state of the taile defeated, for that claime is as an entre made by him, and is of the same

effect in the Law, as if he were vpon the same Tenements, and had entred in the same tenements, as is aforesaid And then when the tenant in taile immediatly after such claim continueth his occupation in the tenements, this is a disseisin made of the same tenements vnto him that made the claime, Et sic per consequens, the tenant then hath Fee simple.

The second thing is, that as oft as he that hath right to enter maketh such claime, & this notwithstanding his aduersary cõtinueth his occupation, &c. so oft the aduersary doth wrõg and disseisin to him that made the claime. And for this cause so oft may he that made the same claime for euery such wrong & disseisin made vnto him, haue a writ of trespas, Quare clausum suũ fregit, &c. to recouer his damages, &c. or he may haue a writ vpon the statute of R. Rich. the 2. made the 5. yere of his raigne, supposing by his writ that his aduersary hath entred into the lands or tenemẽts of him that made the claime, where his entry was not giuen by the law, &c. & by such action he shall recouer his damages, &c. And if the case be such, that the aduersary occupy the tenemẽts with force & armes, or with a multitude of people at the time of such claime, &c. then may he that made claime, for euery such time haue a writ of forcible entry, & recouer his treble damages

Also here it is to see, if the seruant of a man that hath title of entrie, may by the commandement of his master make continuall claime

for

for his Master in his name, & it seemeth that in some cases he might do this, for if he by his commandement come to any parcel of the land, and there maketh claim, &c. in the name of his Master, this claime is good for his Master, for this that he hath done all that it behoueth his Master to do in such case, &c.

Also if a Master say vnto his seruant that he dare not go into the lād, nor into any parcell of the land for to make any claim, &c. and dare not approch more nigh vnto the same lād, saue to such a place called Dale, & commandeth his seruāt to go to the same place of Dale, & there to make a claime for him, &c. if the seruant doe, &c. this seemeth as good claime for his master, as if he had been there in his owne person, for that the seruant did all that his Master durst do, and ought to do by the law in such case.

Also, if a man be so sicke, or so lame that he may not in any maner come to the land, nor to any parcell of the same, or if there be a recluse that may not because of his order goe out of his house, &c. if such a manner of person commaund his seruant to go and make claime for him, &c. and the seruāt dare not go to the land, nor to any parcel thereof for doubt of beating, mayme, or death, and for that cause such seruant commeth as nigh to the land as he dare for such dread, and maketh his claime, &c. for his Master, it seemeth that such claime for his Master, is good and strong in law, for els his Master should be in too great mischiefe, for

it may well be that such a person that is sicke or lame, or recluse, cānot find any seruant that dare go vnto the land, nor to any parcell of it to make the claime for him, &c. But if the master of such seruant be in good health and may & dare wel to go to the tenements, or to parcell of it to make his claim for him, &c. if such a Master command his seruant to goe to some parcel of the land and make claime for him, &c. And when the seruant is going to do the cō-mandement of his Master, he heareth by the way such things that he dare not goe to any parcell of the land for to make any claime for his Master, & for that cause he goeth as nigh vnto the Land as he dare for doubt of death, and there he maketh claime for his master in the name of his master, &c. It seemeth that the doubt in the Law in such case shall be if such claime auaile his master or not, for this that the seruant did not all that his master at the time of commandement durst to haue done.

Also, some haue said, that where a man is in prison and is disseised, and the disseisor dieth seised, during the time that the disseisee is in prison, by which the tenemēts descended to the heire of the disseisor, they haue said that this shall not hurt the disseisee that is in prison, but that he may well enter notwithstanding such descent, for this that he may not make cōtinual claime whē he was in prison. And also if such a one that is in prison be outlawed in an actiō of det or trespasse, or in appeale of robbery, &c.

he

he shall reuerse such outlawry by writ of Error, &c. because he was in prison at the time of the outlawry against him pronounced.

Also if a recouery be had by default against such a one that is in prison, he shall auoide the iudgement by a writ of Error for this that he was in prison at the time of such default made &c. and because that such matters of Record shal not hurt them that be in prison, but that it shalbe reuersed, &c. a multo fortiori, It seemeth that a matter in deed, that is to say, such descēt had when he was in prison shall not hurt him &c. specially for this, that he may not go out of prison to make continuall claime, &c.

And in the same manner it seemeth to them where a man is out of the realm in the kings seruice for busines of the realme, if such a man be disseised when he is in the seruice of the K. that such descent shall not hurt the disseisee, but for this that he might not make continuall claime, &c. it seemeth vnto them, that when he commeth againe into England, he may enter againe vpon the heire of the disseisor, &c. For such a man shall reuerse an outlawry that is pronounced against him during the time that he is in seruice, &c. Ergo a multo fortiori he shal haue aid by the law in the other case, &c.

Also others haue said, that if a man be out of the Realme, though he be not in the Kings seruice, if such a man being out of the Realme be disseised of lands or tenements within the Realme, and the disseisor dis seised, &c. the dis-

seisee

ſeiſee being out of the Realme, it ſeemeth vnto them, that when the diſſeiſee commeth into the realme, that he may well enter vpon the heire of the diſſeiſor, &c. and this ſeemeth vnto them for two cauſes: One is, that he that is out of the realm, may not haue knowledge of the diſſeiſin made vnto him by vnderſtanding of the law, no more than that a thing done out of the Realme may be tried within this Realme by the oath of 12. men, and to compell ſuch a man to make continuall claim, which by the vnderſtanding of the Law can haue no knowledge or Conſiſance of ſuch Diſſeiſin made or done, this ſhalbe inconuenient, namely, when ſuch a diſſeiſin is done vnto him, when he was out of the Realme, and the dying ſeiſed was done when he was out of the realm, for in ſuch caſe he may not by poſſibility after the common preſumption make no continuall claime: But otherwiſe it ſhal be if the diſſeiſee were within the realme at the time of the diſſeiſin, or at the time of the dying ſeiſed of the diſſeiſor, &c. An other matter they alledge for a proofe, that before the ſtat. of K. E. the 3. made the 34. yeare of his raigne, by which ſtatute Nonclaime is out, &c. the law was ſuch, that if a fine were leuied of certain lãds or tenements, if any that was a ſtranger to the fine had right to haue & to recouer the ſame lands or tenements, if hee came not and made his claim thereof within a yeare & a day next after the fine leuied, he ſhall be barred for euer, Quia dicebatur quod finis

finem

fine litibus imponebat. And that the law was such, it is proued by the stat. of West. the 2. De donis conditionalibus, where it speaketh if the fine be leuied of Tenements giuen in the taile, &c. Quod finis ipso iure sit nullus, nec habeant hæredes, aut illi ad quos spectat reuersio (licet plenæ ætatis fuerint, in Anglia, & extra prisonam) necesse apponere clameū suum. So it is proued, that if a stranger that hath right vnto the tenements, if he were out of the realm at the time of the fine leuied, &c. shall haue no damage, though that such fine was matter of record: by greater reason it seemeth vnto them that a disseisin & discent that is matter in deed shal not so grieue him that was disseised when he was out of the Realme at the time of that disseisin, & also at the time that the Disseisor died seised, &c. but that he may well enter notwithstanding such descent. Also inquire if a man be disseised, & he arraign an assise against the disseisor, and the recognitors of the assise chante for the plaintife, and the Iust. of assise will be aduised of their iudgements vntill the next assise, &c. & in the mean season the disseisor dieth seised, &c. yet the said suit of the assise shall be taken in Law for the disseisee a continuall claime, insomuch ỹ no default was in him, &c.

Also inquire if an Abbot of a monastery die, & during the time of vacation, a man wrongfully entreth in certaine parcels of land of the monastery, claiming the Land vnto him and his heires, and of that estate dyeth seised, and

the

the land deſcendeth vnto his heires, and after that an Abbot is choſen, & made Abbot of the Monaſtery, a queſtiõ is, if the Abbot may enter vpõ the heire or not. And it ſeemeth to ſome that the Abbot may well enter in this caſe, for this that the Couent in time of vacation was no perſon able to make continuall claim, for no more than be they perſonable to ſue an action, no more be they perſonable to make continuall claim, for the couent is but a dead body without head, for in time of vacation a grant made vnto them is void, & in this caſe an abbot may not haue a writ of Entre vpon diſſeiſin againſt the heire, for this that he was neuer diſſeiſed. And if ỹ Abbot may not enter in this caſe, thẽ he ſhalbe put vnto his writ of Right, which ſhall be heard for the houſe. By which it ſeemeth to thẽ that the abbot may well enter, &c.

Quæras de dubijs, Legem bene dicere ſi vis,
Quærere dat ſapere quæ ſunt legitima vere.

Releaſes.

RElеaſes be in diuers manners, that is to ſay: Releaſe of right that a man hath in lands or tenements: and releaſe of actiõs reals and perſonals, and of other things. Releaſe of all the right that a man hath in lands or tenements, &c. is commonly made in ſuch forme, or to ſuch effect. Nouerint vniuerſi per preſentes me, A.B. remiſiſſe, relaxaſſe, & omnino de me & hæredibus meis quietũ clamaſſe E. de D. totum ius, titulum, & clameũ meũ quæ habui, habeo, vel quouiſmodo in futurũ habere potero,

&c,

de, & in vno meſſuag' cum prin in P. And it is to be vnderſtood, that theſe words (Remiſiſſe & quiet clamaſſe) be of ſuch effect as theſe words (Relaxaſſe, &c) and alſo theſe words which be cõmonly put in ſuch deeds of releaſes, &c. that is to be vnderſtood, Quæ quouiſmodo in futurũ habere potero, be as words void in the law, for no right paſſeth by a Releaſe, but the right that the releſſor hath at the time of his releaſe made: For if it be father and ſon, & the father be diſſeiſed, & the ſon liuing his father releaſeth by his deed to the diſſeiſor all the right that he hath, or may haue in the ſame tenemẽts, without clauſe of warrantize, &c. and after the father dyeth, the ſonne may lawfully enter vpon the poſſeſſiõ of the diſſeiſor, for this that he had no right in the land liuing his father, but the right deſcended vnto him by diſcent after the releaſe made by the death of his father. Alſo in a releaſe of all the right that a man hath in certaine lands, it behoueth vnto him to whom the releaſe is made in ſuch caſe, that he hath a Freehold in the lands in deed, or in the law, at the time of the releaſe made, for in euery caſe where he to whom the releaſe is made hath a Freehold in deed or in law at the time of the releaſe made, &c. the releaſe is good. Franktenement in law is, as if a man haue diſſeiſed another, & therof dieth ſeiſed, by the which the tenements deſcend vnto his ſon, howbeit that his ſonne enter not in the tenements, yet he hath a franktenement in the law, which by force of

the

the descent is cast vpon him, and therefore the release made is good enough. And if he take a wife so being seised in the law, howbeit that he neuer enter in deed, & dieth, his wife shal haue thereof her dower. And in such case of release of all his right, howbeit that he to whom the releas is made, ne hath any thing in the franktenement, neither in deed nor in law, yet the release is good enough. As if the disseisor haue let land that he had by disseisin to another for terme of his life, sauing the reuersion to him, if the disseisee or his heires release vnto the disseisor all the right, &c. that release is good, for that ỹ he to whom the release is made, had in him a reuersiõ at the time of the release made. In the same maner if a leas be made to a man for terme of life, the remainder vnto another for terme of life, the remainder vnto the third in tayle, the remainder vnto the fourth in fee, if a stranger that hath the right vnto the land releas all his right vnto any of them in the remainder, such release is good, for this ỹ euery of them hath a remainder vested in himselfe: yet if the tenant for terme of life be disseised, & after he that hath right (the possession being in the disseisor) releas vnto one of them to whom the remainder was made, all his right, &c. that releas is void, for that that he ne had in him no remainder in deed, but all onely a right of a remainder at the time of the releas made.

¶ And note, ỹ euery release made to him that hath a reuersiõ or remainder in deed, shal serue

and

and help them that haue the franktenement, as well as them to whom the releaſe is made, if the tenant haue the releaſe in his hand, &c.

In the ſame maner a releas made to a tenãt for terme of life, or to a tenant in the taile, ſhall enure vnto them in the reuerſion, or to them in the remainder, as well as to the tenant of the franktenement, and they ſhall haue as great aduantage of that, if that they may ſhew it.

And if there be lord & tenant, and the tenant is diſſeiſed, & the lord releaſeth vnto the diſſeiſee all the right that he hath in the ſeigniorie, or in the land, that releas is good, & the ſeigniory is extinct. And if the goods of the diſſeiſee be taken, & of them the diſſeiſes ſueth a Replegiare againſt the lord, he ſhall compell the lord to auow vpon him, & if he will auow vpon the diſſeiſor, then vpon the matter ſhewed, the auowry ſhalbe abated, for the diſſeiſee is tenant to him in right and in law.

Alſo if land be giuen to a man in the taile, reſeruing vnto the donor & his heirs a certain rent, if the donee be diſſeiſed, & after the donor releaſeth to the donee all the right that he hath in the land, and after the donee entreth into the land vpon the diſſeiſor: in this caſe the rent is gone, for this that the diſſeiſee at the time of the releas made was tenant in right, & in law vnto the donor, and the auowrie of fine force ought to be made vpon him by the donor of the rent behind, &c. But yet nothing of the right of the land, that is to ſay, of the reuerſion ſhall

paſſe

paſſe by ſuch releaſe, for this that the donee to whom the releaſe was made thē had nothing in the lād but only a right, & ſo the right of the land may not paſſe by ſuch releas to the donee.

In the ſame maner it is, if a leaſe be made to one for terme of life, reſeruing to the leſſor and to his heires certaine rent, if the leſſee be diſſeiſed, & after the leſſor releaſeth to the leſſee and to his heires, and after the leſſee entreth, howbeit that in this caſe the rent is extinct, yet nothing of the right paſſeth, &c. Cauſa qua ſupra. But if it be very Lord, and very tenant, and the tenant maketh a feoffement in fee, the which feoffee neuer became tenant to the lord, &c. if the lord releas to the feoffor all his right, &c. that releas is void, for this that the feoffor hath no right in the land, and he is no tenant in right to the Lord, but only tenant as for the auowry to be made, and he ſhall neuer compell the Lord to auow vpon him, for the lord may auow vpon the feoffee if he will. Otherwiſe it is where the very tenant is diſſeiſed, as in caſe aforeſaid, for if the very tenant that is diſſeiſed holdeth of the Lord by knights ſeruice & dieth, his heire being within age, the lord ſhall haue and ſeiſe the ward of the heire. And ſo he ſhall not haue the ward of the feoffor that made the feoffement in fee, and ſo it is a great diuerſity betweene the two caſes.

Alſo, if a man enfeoffe another in his Land vpon truſt, and to the intent that he ſhall performe his laſt will, and the feoffor occupieth

the

the ſame at the will of his Feoffees, and after the feoffees releas by their deed vnto the feoffor all the right, &c. This hath beene in queſtion if ſuch releaſe bee good or not, and ſome haue ſaid that ſuch releaſe is void, for this that no priuitie was betweene the Feoffees and their Feoffor, inſomuch that no Leaſe was made after ſuch feoffement by the feoffees and their feoffor, to hold at their will, &c. and ſome haue ſaid the contrary, & that for two cauſes. One is, that when ſuch feoffements are made vpon confidence, to performe the will of the Feoffor, that it ſhall be vnderſtood by the law, that the Feoffor by and by ought to occupy the land at the will of his feoffees, and ſo it is ſuch maner of priuitie betweene them, as if a man make a feoffement to other perſons, and they incontinent vpon the feoffement will ſay & grant that the Feoffor ſhall occupy the land at their will, &c. Another cauſe they alledge, that if ſuch land be worth xl.s. by yere, &c. That ſuch feoffor ſhalbe ſworne in Aſſiſes, and in other Inqueſts, in pleas reals, and alſo in pleas perſonals, of what great ſummes ſoeuer that the plaintifes will declare, &c. And this is by the common Law of the Land: Ergo this is for a great cauſe, and the cauſe is that the law will that ſuch feoffors and their heirs ought to occupy, &c. And to take thereof the rent & all the profits, and all manner of iſſues and reuenues &c. as though the tenements were their owne without interruptiõ of y feoffees, notwithſtã-

ding ſuch Feoffements, Ergo the ſame law giueth a priuity betweene ſuch feoffors, and their Feoffees vpon confidence, &c. For which cauſes they haue ſaid, that the Releaſe made by ſuch feoffees vpon confidence to the feoffor, or to his heires, &c. ſo occupying the land, &c. ſhall be good enough, &c. And this is the better opinion as it ſeemeth. Quære ſince the ſtatute 27. H. 8. cap. 10. Alſo releaſes after the matter in deed ſometime haue their effect by force to enlarge the eſtate of them to whom the releaſe is made: As if I let certaine land to a man for terme of yeares, by force whereof he is poſſeſſed, and I releaſe vnto him all the right that I haue in the land without more words ſet or put in the deed, and deliuer vnto him the deed: Then hee hath eſtate but for terme of his life, and the cauſe is for this, that when the Reuerſion or the Remainder is in a man, the which will inlarge by his releas the eſtate of the tenant, &c. he ſhall haue no greater eſtate but in the manner and forme as if ſuch a Leſſour were ſeiſed in Fee, and will by his deed make eſtate to one in a certaine forme, &c. and deliuer vnto him ſeiſin by force of the ſame deed, if in ſuch deed of Feoffement there be no word of Inheritance, &c. Then he hath eſtate but for terme of life, &c. and ſo it is in ſuch Releaſe made by him in the Reuerſion, or in the remainder: For if I let land to a man for terme of life, and after I releaſe vnto him all my right without more ſaying in the re-

leaſe

leaſe, his eſtate is not inlarged. But if I releas vnto him and to his heirs of his body engendred, then he hath fee taile. And if I releas vnto him and to his heirs, then hath he fee ſimple. So it behoueth in ſuch caſe to ſpecifie in the deed, what eſtate he to whom the releas is made ſhal haue, &c. And ſometime a releas ſhal enure to ſet and put the right of him that maketh the releas to him to whom the releas is made: As a man is diſſeiſed, and he releaſeth vnto the Diſſeiſor all the right that hee hath, In this caſe the diſſeiſor hath his right, ſo that where his eſtate before was wrong, now by the releaſe it is lawful & right. But note well, that when a man is ſeiſed in fee ſimple of any lands or tenements, and another will releaſe vnto him all the right that he hath in the ſame tenemẽts, it needeth not to ſpeake of the heires of him to whom the releaſe is made, for this that he had fee ſimple at the time of the releaſe made: for if the releas were made to him and to his heires for one day, or for one houre, this ſhall be as ſtrong vnto him in the Law, as he had releaſed to him and to his heires, for when his right was gone from him at one time by his releas without any condition, &c. to him that had fee ſimple, it is gone for euer. But where a man hath a reuerſion or a remainder in fee ſimple at the time of the releaſe made, then if he will releaſe to the Tenaunt for terme of yeares, or for terme of life, or in the taile, it behoueth to determine the eſtate

that he to whom the releas is made ſhall haue by force of the ſame releas: For this that ſuch releas goeth to inlarge the eſtate, &c. of him to whom the releas is made: but otherwiſe it is where a man hath but a right vnto the land, & had nothing in the reuerſiõ nor in y remainder in deed: for if ſuch a man releas all his right to one that is tenant of the franktenement, all his right is gone, though that no mention be made of the heires of him to whom the releas is made. For if I let land to a man for term of life, if I after releaſe vnto him for to inlarge his eſtate, either it behoueth that I releas vnto him & to his heirs of his body ingendred, or to him and to his heires males of his body begotten, or by ſuch ſemblable eſtate, &c. or otherwiſe he hath no greater eſtate than he had before. But if my tenant for terme of life let the ſame land out to another for terme of the life of his Leſſee, the remainder to another in fee, now if I releas vnto him vnto whom my tenant letteth for term of life, I ſhalbe barred for euer though that no mention be made of his heires, for this that at the time of the releaſe made I had no reuerſion, but onely a right to haue the reuerſion: For by ſuch a leaſe with a remainder ouer that my tenant made, in this caſe my reuerſion is diſcontinued, & ſuch a releaſe ſhall enure vnto him in the remainder to haue aduantage of this, aſwel as to the tenant for term of life, for to that intent the tenant for terme of life, & he in the remainder be as one

tenant

tenāt in the law, & be as if one tenāt were ſole ſeiſed in his demeſne as of fee at y time of ſuch relas made vnto him. Alſo if a man be diſſeiſed by two, if he releas vnto one of thē, he ſhall hold his fellow out of the lād, & by ſuch releas ſhal ſole haue poſſeſſiō & eſtate in the lād. But if one diſſeiſor infeffe two in fee, & the diſſeiſee releaſe to one of them, this ſhall inure to both the ſaid feoffees. And the cauſe of the diuerſity betweene theſe two cauſes, is apparāt enough.

Alſo, if I be diſſeiſed, & the diſſeiſor is diſſeiſed, if I releas to the diſſeiſor of my diſſeiſor, my diſſeiſor ſhall neuer haue Aſſiſe nor enter vpon his diſſeiſor, for this that his Diſſeiſour hath my right by my releaſe, &c. And ſo it ſeemeth in this caſe, that if there were xx. diſſeiſors each after other, & I releas to the laſt diſſeiſor, he ſhall bar all the other of their actions & their title. And the cauſe is, as it ſeemeth, for this, & in many caſes whē a mā hath a lawfull title to enter, though he enter not, &c. he ſhal defeat all mean titles by his releas, &c. But this is not in euery caſe, as ſhalbe ſaid afterward.

Alſo, if a man be diſſeiſed, the which hath a ſonne within age, and dieth, and being the ſon within age, the diſſeiſor dieth ſeiſed, & the land deſcendeth to the heire, and a ſtranger abateth, and after the ſonne of the diſſeiſee when he commeth vnto full age releaſeth all his right, &c. to the abator: In this caſe the heire of the diſſeiſor ſhall haue no Aſſiſe of Mortdanceſtor againſt the abator, but he ſhall be barred of the

Assise, for this that the abator hath the right of the son of the disseisee by his releas, and the entry of the son was lawfull, &c. for this that he was within age at the time of the descent, &c. But if a man be disseised, & the disseisor maketh a feoffement vpon condition, that is to say, to yeeld vnto him certaine rent, and for default of paiment a reentrie, &c. if the disseisee releas to the feoffee vpon condition, yet this amendeth not the estate of the feoffee vpon condition, for notwithstanding such releas, yet his estate is vpon condition as it was before. In the same maner it is where a man is disseised of certain land, & the disseisor granteth a rent charge out of the same land, though that after the disseisee releaseth vnto the disseisor, &c. yet the rēt charge abideth in his force: And the cause is in these two cases, that a man shall haue none aduantage by such releas that shall be against his owne proper acceptance, and against his owne grant. And though that some haue said, that where the entry of a man is congeable vpon a tenant, if he releas to the same tenant, that this auaileth vpon the tenant, so as he had entred vpon the tenant & after infeoffed him, &c. this is not true in euery case, for in the first case of these two cases, if the disseisee in fee enter vpon the feoffee vpon condition, & after infeoffeth him then the condition is all put aside & void. And in the second case if the disseisee enter & infeoffe him that granted the rent charge, then is the rent charge auoyded. But it is not auoyded

by

by any ſuch releaſe without entrie made, &c.

Alſo, if a man be diſſeiſed by a child within age, which alieneth in fee, and the alienee dieth ſeiſed, and his heire entreth (being the diſſeiſor within age) now it is in the electiō of the diſſeiſor to haue a writ of Dū fuit infra ætatē, or a writ of right againſt the heire of the alienee, & which writ ſoeuer he taketh of them, he ought to recouer by the Law. And alſo he may enter into the land without any recouery, & in this caſe the entry of the diſſeiſee is takē away: but in this caſe if the diſſeiſee releas his right to the heire of the alienee, and after the diſſeiſor bringeth a writ of Right againſt the heire of the alienee, & he ioineth the miſe vpon the cleere right, &c. the grand Aſſiſe ought by the law to find that the tenant hath more cleere right, &c. than hath the diſſeiſor, for this that the tenant hath the right of the diſſeiſee, by his releaſe, which is more anciēt & more cleere right than the right of the diſſeiſor, for by ſuch releas, all the right of the diſſeiſee paſſeth vnto the tenant & is in the tenant. And to this ſome haue ſaid, that in ſuch caſe where a man hath right to lands or tenements (but his entry is not lawfull) if he releaſe vnto the tenant, &c. then ſuch releaſe ſhall enure by way of extinguiſhment. And vnto this it may be ſaid, that this is truth vnto him that releaſeth, for by his releas he hath diſmiſſed himſelfe cleane of his right as to his perſon: But yet the right that he had may well paſſe and go vnto the tenant by his

releas, for it should be inconuenient y such an anciēt right should be extinct all vtterly, &c. for it is cōmonly said, that right may not die. But a releas that goeth by way of extinguishment against all persōs, is where he to whō the releas is made, may not haue this that to him is released. As if there be lord & tenant, & the lord releaseth vnto the tenant all the right he hath in the lordship, or all the right he hath in the Land, &c. such a releas goeth by way of extinguishmēt against all persons, for this that the tenāt may not haue the same of himself. In the same maner is a releas made to the tenant of land of a rent charge, or of a cōmon of pasture, for this that the tenant may not haue that that vnto him is released, &c. So such releases go away by extinguishment against all persons.

Also, to proue that the grand assise ought to passe for the demādant in the case aforesaid, I haue heard often in the lecture vpon the stat. of West. the 2. that beginneth, In casu quando vir amiserit p defalt̄ tenem̄tū qđ fuit ius vxor̄ sue &c. that at the cōmon law before that statute, if a lease were made to a tenāt for term of life, the remainder ouer in fee, & a strāger by a fained action recouer against the tenant for terme of life by default, & after the tenant dieth, he in the remainder hath no remedy before the statute, for this that he had no possession of the land, but if he in y remainder had entred vpon the tenant for terme of life, and disseised him, and after the tenant entreth vpon him, & after

the

the tenant for terme of life leeſeth by ſuch recouery had by default, and dieth: now he in the remainder may well haue a writ of Right againſt him that recouered, for this that the mile ſhalbe ioined only vpon the cleer right. And yet in this caſe the ſeiſin of him in the remainder was defeated by the entrie of the Tenant for term of life. But peraduenture ſome will argue and ſay, that he ſhall haue no writ of right in this caſe, for this that when the mile is ioined in ſuch maner, that is to ſay, if the tenant haue more cleere right to the land in the maner as it is holden, then the demandant hath in the maner as he demandeth. And for this that the ſeiſin of the demandant was defeated by the entry of the tenant for terme of life, then he hath no right in the manner as he demandeth. Vnto this it may be ſaid, that thoſe words (Modo & forma prout, &c.) in many caſes be words of the maner of pleading, & no words of ſubſtance: For if a man bring a writ of Entre (In caſu proviſo) of alienation made by the tenant in dower to his diſinheritance, and pleadeth of the alienation made in fee, and the tenant ſaith that he alened not in the manner as the demandant hath declared, and vpon this they be at iſſue, and it is found by verdict that the tenant alened in the taile, or for terme of anothers life, the demandant ſhall recouer, and yet the alienation was not in the manner as the demandant hath declared.

Alſo, if there be Lord and Tenant, and the tenant

tenant holdeth of the lord by fealty onely, & the lord diſtraineth the tenãt for rent, & the tenant bringeth a writ of treſpas againſt his L. for his cattell ſo take, & the lord pleadeth that the tenant holdeth of him by fealty & certain rent, & for the rent behind he came to diſtrain, &c. & demãdeth iudgemẽt of the writ brought againſt him, Quare vi & armis, &c. And the other ſaith that he holdeth not of him in the manner as he ſuppoſeth, & vpon this they be now at iſſue, & it is found by verdict that he holdeth of him by fealty tantũ. In this caſe the writ ſhall abate and yet he held not of the lord in the manner as the lord hath ſaid, for the matter of the iſſue is, whether the tenãt holdeth of him or not: for if he hold of him, though the Lord diſtraine for other ſeruices that he ought not haue, yet ſuch a writ of treſpas, Quare vi & armis, &c. lieth not againſt the Lord but ſhall abate.

Alſo, in a writ of treſpas of beating, or of goods taken, if the defendant plead nonculpable in the manner as the plaintife ſuppoſeth, & it is found that the defendant is culpable in another Towne, or at another day than the plaintife ſuppoſeth, yet he ſhall recouer: And in many mo other caſes theſe words, that is to ſay, in the manner as the demandeur or the plaintife hath ſuppoſed, be no matter of ſubſtance of the iſſue: for in a writ of right when the miſe is ioyned vpon the cleare right, it is as much to ſay, & to ſuch effect, that is to wit, whether hath the more right, the Tenant or the

the demandant to the thing so demanded, &c.

Also, if a mā be disseised, & the disseisor dieth seised, &c. & his son & heire is in by discent, and the disseisee entreth upon the heire of the disseisor, the which entry is a disseisin, &c. if the heire bring an assise: or a writ of Right against the disseisee, he shall be barred: for this that when the grand assise is sworne, their oath is upon the cleere right, and not upon the possession, &c. for if the heire of the disseisor had brought an Assise of Nouel disseisin, or a writ of Entre in nature of assise, and recouered against the disseisee, and sued execution, yet may the disseisee haue a writ of Entre in the Per against him of the disseisin made vnto him by his father, or he may haue against the heire a writ of Right: But if the heire ought to recouer against the disseisee in the case aforesaid by a writ of right, then all his right shall be clearly gone for this that a finall indgement should be giuen against him, which should be against reason where the disseisee hath more cleare right, &c.

And know ye my son, that in a writ of right after this that the 4. Knights be chosen in the grand assise then there is no greater delay than in a writ of Formedon, after this that the parties be at issue, &c. And if the mise bee ioyned vpon battaile, then there is lesse delay.

Also, a release of all the right, &c. in some case is good, made vnto him that is supposed tenant in the law, though he haue nothing in the tenements, as in a Præcipe quod reddat,

if

if the tenant alien the land hanging the suit, & after the demandant releaseth to him all his right, that release is good, for this that he is supposed to be tenant by the suit of the demandant, and yet he hath nothing in the land at the time of the release made. In the same maner it is, if in a Præc' qđ reddat the Tenant vouch, & the vouchee enter into the garranty, if after the demandant release to the vouchee all his right, &c. this is good enough, for this that the vouchee after this that he hath entred into the garranty, is tenant in law to the demandant.

Also, as to releases of actions reals, and actions personals, it is so, that some actions be mixt in the realty and in the personalty, as if an action of waste be sued against the tenant for terme of life, this Action is in the realtie, for this that the place wasted shall be recouered. And also it is in the personalty, for this that the treble damage shall be recouered for the wrong & waste done by the tenāt, & for this in this Action a releas of actions reals is a good plee in barre, and so is a releas of actions personals In the same maner it is in Assise of Nouel disseisin, for this that it is mixt in the realty and in the personalty. But if such assise be arraigned against the disseisor, the tenāt of the disseisor may plead a releas of all actions personals for to barre the Assise, but not a releas of actiōs reals, for none shal plead a releas of actions reals in assise, but the tenants, &c.

Also, in such actions that ought to be sued

against

againſt the tenant of the franktenement, if the tenant haue a releas of all actions reals of the demandant made vnto him before ỹ writ purchaſed, and he pleadeth it, this is a good plee for the demãdant to ſay that he that pleadeth that plee had nothing in the franktenement at the time of the releaſe made, for that hee had no cauſe to haue an action reall againſt him.

Alſo, in ſuch caſe where a man may enter in lands or tenements, and may alſo haue of this an action reall which is giuen vnto him by the law againſt the tenant: if in this caſe the demandant releaſeth to the tenant all manner action reals, yet this taketh not away the entrie of the demandant, but the demandant may well enter, notwithſtanding ſuch releaſe, for this that nothing is releaſed but the action, &c. In the ſame manner it is of things perſonels: As if a man wrongfully take my goods, if I releaſe vnto him all actions perſonals, yet I may by the Law take my goods out of his poſſeſſion.

Alſo, if I haue cauſe to haue a writ of Detinue of my goods againſt another, though that I releas vnto him all actions perſonals, yet I may take my goods out of his poſſeſſion for this, that no right of goods is releaſed to him but onely the action, &c. Alſo if a man be diſſeiſed, and the Diſſeiſour maketh a Feoffement vnto diuers perſons to his vſe, and the Diſſeiſour continually taketh the profits, &c, and the diſſeiſee releaſeth vnto him all actions reals,

reals, and after he sueth against him a writ of Entre in nature of assise, because of the statute, for this that he taketh the profits: Inquire how the disseisor shall be holpen by the said release, for if he will plead the release generally, then the demandant may say that he had nothing in the franktenement at the time of the release made, and if he plead the releas specially, then it behoueth him to knowledge a disseisin and then may the demandant enter in the land &c. by his continance of the disseisin, &c. But peraduenture by speciall pleading he may be barred of the action that he sueth, &c. though that the demandant may enter, &c.

Also if a man sue Appeale of Felony of the death of his ancestor against another, though the appellāt releas vnto the defendant all maner actions reals and personals, this shall not helpe the defendant, for this that this appeale is not an action real, insomuch that the appellant shall not recouer any realty, nor such appeale is no action personall, insomuch that the wrong was vnto his ancestor and vnto him: but if he release to the defendant all manner of actions then it shall be a good barre in appeale. And so a man may see that a releas of all maner of actions, is better than a release of actions reals and personals, &c.

Also, in appeale of robbery, if the defendant will plead a releas of the appellant of all actions personals, this seemeth no plee, for an action of appeale where the appellant shall haue

iudge-

iudgement of death, &c. is more high than an action personall, and it is not properly said an action personall, and therefore if the defendant will haue the release of the appellant to barre him of the Appeale, it behoueth him to haue a release of all maner of Appeales, or a Release of all manner of actions, as it seemeth, &c. But in Appeale of Mayhem, a releas of all manner of actions personals is a good plee in barre, for this, that in such an action he shall recouer but damages.

Also, if a man be outlawed in an action personal by proces of the originall, & bring a writ of Error, if he at whose suit he was outlawed will plead against him a releas of actions personals, this seemeth no plee, for by the said action, he shall recouer nothing in the personaltie, but all only to reuerse the vtlawry: But a release of a writ of Error shalbe a good plee, &c.

Also, if a man recouer debt or damage, and he release to the defendant all manner of actions, yet he may lawfully sue execution by Capias ad satisfaciendū, or by Elegit, or by Fieri facias, for execution by such writs may not bee said an Action, but if after a yeare and a day the plaintife will sue a Scire facias to haue execution, &c. then it seemeth a release of all actions shall be a good plea in barre: But some haue thought the contrary, insomuch that the writ of Scire facias is a writ of execution, and is to haue execution. But insomuch that vpon the same writ ỹ defendant may plead diuers matters

ters after the iudgemẽt giuen to put him from execution, as vtlawry, & diuers other, &c. therefore it may wel be ſaid actiõ, &c. & I trow that in a Scire facias out of a fine, a releas of al maner of actiõs is a good plea in bar, but when a mã hath recouered det or damage, & it is accorded betweẽ thẽ, that the plaintife ſhal not ſue execution, then it behoueth that the plaintife make a releas to him of all maner executions.

Alſo if a man releas to another all manner demands, this is the moſt beſt releas that he to whom the releaſe is made can haue, & moſt ſhall enure to his aduãtage, for by ſuch releaſe of all manner of demands, all maner of actions reals and perſonals, and actions of appeales be gone and extinct, and all maner of executions be gone and extinct; and if a man hath title to enter in any lands or tenements, by ſuch releas his title is gone. And if a man haue rent ſeruice, or rent charge, or common of paſture, &c. by ſuch releas of all maner demands to the tenant of the land, whereof the ſeruice, or the rent is going out, or in what land ſoeuer the common be, the ſeruice and rent, and the common is gone and extinct, &c.

Alſo, if a man releaſe to another all manner quarrels, or all controuerſies or debates betweene them, Inquire to what matter, and to what effect ſuch words do extend.

Alſo, if a man be bound by his deed to another in a certaine ſumme of mony to pay at the feaſt of S. Mich. then next following, &c. if the

obligee

obligee before the ſaid feaſt releas to the obligor all actions, he ſhalbe barred of the duty for euer, & yet he might haue no action at the time of the releas made. But if a man let land to another for terme of yeres, to yeeld at the feaſt of S. Mich. next inſuing xl.s. & before the ſame feaſt he releaſeth to the leſſee all actions, yet after the ſame feaſt he ſhal haue an action of debt for the non payment of the xl.s. notwithſtanding the ſaid releas. Study the cauſe of the diuerſitie betweene theſe two caſes.

Alſo, where a man will ſue a writ of right, it behoueth that he plead of the ſeiſin of himſelf or of his anceſtors, & alſo that the ſeiſin was in time of the ſame king, as he pleadeth in his plee for this is an ancient Law vſed, as it appeareth by report of a certaine plee, in ſuch forme as inſueth. Sir I. Barrey brought a writ of right againſt Raimould Aſhlington, & demanded certain tenements, &c. the miſe was ioined in the banke, & the originall & the proces were ſent before Iuſt. errants, where the parties came, & the 12 knights were ſworne, without challenge of the parties to be allowed, for this y the election was made by aſſent of the parties, with the 4. knights, & the oath was ſuch, That I ſhall ſay truth, &c. whether R. of A. haue more right to hold the tenements that I. Barrey demanded againſt him by his writ of right, or Iohn to haue the tenemẽts as he demandeth, & for nothing to let to ſay the truth, as God me helpe, &c. without ſaying to their

knowledge, & such oth shall be made in attaint and battell, and in waging of law, for those do bring euerie thing vnto an end: but J. B. pleaded of the disseisin of one Ralfe his ancestor in the time of K. H. and Rainold vpō the mise ioined tendred half a mark for the time, &c. & vpon this Herle Iust. said to the grād assise, after that they were charged vpon the cleere right: Goodmē, Rainold gaue half a mark to the King for that time, to the entent that if you find that the ancestor of J. was not seised at the time that the demandant hath pleaded, you shall enquire no further vpon the right: and for this ye shall say to vs, whither the ancestor of J. Ralfe by name, was seised in the time of K. H. as he hath pleded, or not: and if ye find that hee was not seised in the time, ye shall enquire no more, and if yea find hee was seised, then inquire further of the right: & after the grand assise came with their verdit, and said, that Ralf was not seised in the time of K. H. wherby it was awarded, that Rainold should hold the tenemēts against him demaunded to him and to his heires quite of J. Barrey and his heires, to the remnant, and John in the mercie.

Confirmation.

A Deed of confirmation is most commonly in such forme, or to such effect: Nouerint vniūsi &c. me A. de B. ratificasse, ap ꝓbasse, & confirmas. C. de D. statū & possessionē quos habeg de, & in vno messuag cū ꝑtiñ in N. &c. And in some case a deed of confirmation is good & valeable

able, where in the same case, a deed of releas is not good nor vatiable. As I let land to a man for terme of his life, the which letteth the same land to another for xl. yeares, by force of the which he is possessed, if I by my deed confirme the state of the tenant for terme of yeares, & the tenant for terme of life dieth during the terme of years, I may not enter in the lād during the same terme, yet if I by my deed of releas haue released to the tenant for terme of yeres in the life of the tenant for term of life, the releas shall be void, for this, that then no priuity was betwen me & the tenant for terme of yeres, for a releas is not auatleable to the tenant for term of yeres, but where a priuity is betweene him & him that releaseth. In the same manner it is if I be disseised, and the disseisor make a lease to another for terme of yeres, if I release vnto the termor, it is void: but if I cōfirm the estate of the termor, that is good & effectuall. Also, if I be disseised, & I confirme the state of the disseisor, thē hath he a good & rightful estate in fee simple, though that in the deed of confirmation no mention is made of his heires, for this that he had fee simple at the time of the cōfirmation: for in such case if the disseisee confirme the state of the disseisor, to haue & to hold to him for term of his life, yet the disseisor hath fee simple, & is seised in his demesne as of fee, for that when his estate was cōfirmed, he hath fee simple, & in such deed he may not chāge his estate without entry vpō him, &c. In the same maner it is, if y

eſtate be cõfirmed for term of a day, or for term of an houre, he hath a good eſtate in fee ſimple, for this, that his eſtate in fee ſimple was once cõfirmed, for cõfirmare, idē eſt qd firmũ facere.

Alſo, if 2 be diſſeiſors, & the diſſeiſee releaſeth to the one, he ſhall hold his fellow out of the land: But if the diſſeiſee confirme the eſtate of one without more ſpeech in the deed, ſome ſay that he ſhall not hold his fellow out, but he ſhal hold iointly with him, for that nothing was confirmed but his eſtate that was ioint: and for this ſome haue ſaid, that if 2 iointenants be, & the one confirmeth the eſtate of the other, that he hath but a ioint eſtate as he had before. But if he haue ſuch words in the deed of confirmation, to haue & to hold to him & to his heires all the tenements wherof mention is made in the confirmation, then he hath eſtate ſole in the tenemẽts, & therfore it is a good & a ſure thing in euery cõfirmatiõ, to haue theſe words, to haue & to hold the tenements, &c. in fee, or in fee taile, or for terme of life, or for terme of years after, or as the cauſe or matter is: for to the intent of ſome, if a man let land to another for terme of life, and after he confirmeth his eſtate by theſe words, to haue & to hold his eſtate to him & to his heires, this confirmation as concerning his heires is void, for his heires cannot haue his eſtate which was but for terme of life, but if he cõfirme his eſtate by theſe words, to haue the ſame land to him & to his heires, this confirmation maketh fee ſimple in this caſe to him

in

in the land, for this, that these words, to haue & to hold, &c. goeth to the lād, & not to the estate that he hath, &c. Also if I let certaine land to a woman sole for terme of her life, the which taketh a husband, & after I confirm the estate to the husband & to the wife for terme of their liues, in this case y husband holdeth not iointly with the wife, but holdeth in the right of his wife for term of his life: but this confirmation shal enure to the husbād by way of remainder for term of his life, if he suruiue his wife. But if I let lād to a womā sole for terme of yeres, which taketh a husband, & after I cōfirme the estate to the husband and the wife, for term of both their liues, in this case they haue ioynt estate in the franktenement of the land, for this that the wife had no franktenement before.

Also, if a parson of a church charge the glebe of his church by his deed, & the Patron & the Ordinary confirme the same grāt, & all this is cōprised within the same grant, the same grant shall be in his strength after the purpose of the same grant: but in such case it behoueth that the patron haue fee simple in the aduowson, for if he haue estate in y aduowsō for term of life, or in taile, thē the grant shal stand but during his life, & the life of the parson y granted it, &c.

Also, if a man let land for term of life, which tenant for terme of life chargeth the land with a rent in fee, and he in the reuersion confirmeth the same grant, this charge is good enough, and effectuall. And if there be a perpetuall chantry,

wherof the Ordinary hath nothing to meddle nor to do, the patron of the chantry, & the chaplain of the same chātry may charge the chātry with a rent charge in perpetuity. Also in some case these verbs Dedi & concessi, haue the same effect in substāce, & shal enure to the same intēt as this verb cōfirmaui: as if I be disseised of a plough land, & after I make such a deed, &c. Sciant præsētes, &c. qđ dedi to the disseisor the said plough land, &c. And if I deliuer only the deed to him without liuery of seisin of the land, that is a good confirmatiō, & as strōg in the law, as if he had in the deed this verbs cōfirmaui, &c.

Also, if I let lād to a man for terme of yeres by force of which he is possessed, & after i make him a deed, &c. qđ dedi, vel cōcessi, &c. the same land, to haue for terme of his life, & deliuer him the deed, then by & by he hath estate in the land for terme of his life, & if I say in ꝑ deed, to haue to him & to his heires of his body ingēdred, he hath estate in the taile, & if I say in the deed, to haue & to hold to him & to his heires, he hath estate in fee simple, for this shall enure to him by force of confirmatiō to inlarge his estate. Also if a mā be disseised, & the disseisor dieth seised, & his heire in by discēt, after the disseisee & heire of the disseisor make iointly a deed to another in fee, & liuery of seisin vpō this is made, as to the heire of the disseisor that inspecteth the deed, the tenemēts passe by the same deed by way of refmēt, & as to the disseisee y inspecteth the same deed, this shall not enure but by the way of cō-

firma-

firmation: but if the disseisee in this case bring a writ of Entrie in the (Per & Cui) against the alienee of the heire of the disseisor, inquire how he shall plead the deed against the demandant by way of confirmatiõ, &c. And know this my child, that it is one of the most honorable, laudable, & profitable things in our Law, to haue the science of well pleading, in actions reals & personals, & for this I counsell thee, especially to set thy courage and care to learne that.

Also, if there be Lord & tenant, and the Lord confirmeth the estate that the Tenant hath in the tenemẽts, yet the seigniory wholly abideth to the lord as it was before. In the same manner it is if a mã haue a rent charge out of certaine land, and he confirmeth the state that the tenant hath in the land, yet abideth to the confirmor the rent charge. In the same manner it is if a man haue cõmon of pasture in the land of any other, if he confirmeth the state of the tenant of the land, nothing shal depart from him of his common, but this notwithstanding the common abideth to him as it was before.

But if there be Lord and tenant, which holdeth of his lord by seruice of Fealtie, & xx.s. of rent, if the Lord by his deed confirme the estate of the tenant to hold by 12.d. j.d. or by an ob. in this case the Tenant is discharged of all other seruices, and shall yeeld nothing to the Lord, but that that is comprised within the same confirmation, yet if the Lord will by the deed of confirmation, that the Tenant in this

case ought to yeeld to him a Hauke, or a Rose yearely at such a feast, &c. this reseruation is void, for this that he reserueth to him a new thing that neuer was parcell of the seruices before the confirmation, and so the Lord may abridge the seruices by such confirmation, but he may not reserue to him a new seruice, &c.

Also, if there be Lord, Meane, & tenant, & the tenant is an Abbot that holdeth of the meane by certaine seruices yearly, the which hath no cause to haue acquitãce against his meane for to bring a writ of Meane, &c. in this case if the meane confirme the estate that the Abbot hath in the land, to haue and to hold the Land vnto him & his successors in frankalmoigne, or free almes, &c. in this case this cõfirmation is good, & then the Abbot holdeth of the meane in frãkalmoigne: & the cause is for that no new seruice is reserued, for all the seruices specially specified be extinct, & nothing is reserued to the meane, but the Abbot shall hold the land of him as it was before the confirmation, for he that holdeth in frãkalmoigne ought to do no bodily seruice, so that by such cõfirmatiõ it appeareth the meane shall not reserue vnto him no new seruice, but that the lands shalbe holden of him as it was before, & in this case the Abbot shall haue a writ of meane, if he be distrained in his default, by force of the said cõfirmation, where percase he might not haue such a writ before.

Also, if I be seised of a villein, as of a villein in grosse, & another taketh him out of my pos-

session

ſeſſion claiming him to be his villein, whereas he hath no right to haue him as his villein, and after I confirme the eſtate to him that he hath in my villein, this confirmation ſeemeth void, for this, that none may haue poſſeſſion of a mā as of a villein in groſſe, but he which hath right to haue him as his villein in groſſe, and inſomuch that he to whom the confirmation was made, was not ſeiſed of him as of his villeine at the time of his confirmation, ſuch confirmation is void: but in this caſe if ſuch words were in the deed, Sciatis me dediſſe & confirmaſſe tali, &c. talē villenū meum, this is good, but this ſhal enure by force and way of grant, and not by way of confirmation, &c.

Alſo ſometimes theſe verbes (Dedi & conceſſi) enure by way of extinguiſhment of the thing giuen or granted. As a tenant holdeth of his lord by certaine rent, & the lord by his deed granteth to the tenāt & to his heirs the rent, &c this ſhall enure to the tenant by way of extinguiſhment, for by this grāt the rent is extinct. In the ſame maner it is, where one hath a rēt charge of certain land, & he granteth to the tenant of the land the rent charge, and the cauſe is for this, that it appeareth by the words of the grant, that the will of the donor is, that the tenant ſhall haue the rent, &c. inſomuch that he may haue no rent out of his own lād, for this, the deed ſhalbe vnderſtood & taken for the moſt aduantage and auaile of the tenant that it may be taken, & that is by way of extinguiſhment.

Alſo

Also, if I let lād to a man for term of yeres, and after I confirme his estate without moe wordes put in the deed, he hath no greater estate but for terme of yeares, as he had before: But if I releas to him my right that I haue in the lād without mo wordes put in the deed, he hath estate of Franktenement. And so maist thou my child vnderstād great diuersities betweene releases & confirmations. And if I be within age, & let land to one for terme of xx. yeres, and he granteth the land for terme of x. yeares, so that he granteth but parcell of the terme: In this case whē I am of full age, if I releas vnto the grauntee of the lessee, &c. this release is void, for this, that there is no priuity betweene him & me. But if I confirm his estate, thē this confirmation is good: But if my lessee graunt all his estate to another, then my releas made to the grantee is good and effectuall.

Also, if a man grāt a rent charge out of his land to another for terme of his life, & after he cōfirmeth his estate in the same rent, to haue & to hold to him in fee taile, or in fee simple, this confirmation is void, as to the inlarging of his estate, for this, that he that confirmeth had no reuersion in the rent: but if a man be seised in fee of rent seruice, or of rent charge, & he granteth the rent to another for term of life, & the tenant attorneth, & after he confirmeth the estate of the grātee in fee tail, or in fee simple, this cōfirmation is good as to inlarge his estate after the wordes of the deed of confirmation, for this

that

that he that confirmed the estate at the time of the confirmation had the reuersion of the rent, &c. But in this case aforesaid, where a man granteth a rent charge to another for terme of life, if he will that the grantee shall haue estate in the taile, or in fee, him behoueth that the deed of the grāt of the rent charge for terme of life, be surrendred or cancelled, & then to make it a new deed of such a rent charge, to haue and to take to the grantee in the taile, or in fee, Ex paucis dictis intendere plurima possis.

Attournement.

ATtournement is, if there be Lord and Tenant, and the Lord will grant by his deed the seruice of his tenant to another for terme of yeres, or for term of life, or in taile, or in fee, it behoueth that the tenāt attorne to the grantee in the life of the grantor by force & vertue of the grant, or otherwise the grant is void. And attournment is none other thing in effect, but when the tenant hath heard of the grant made by his Lord, that the same tenant by word agree to the said grant, as to say to the grantee, I agree me to the grant made to you, or I am well content of the grant made to you, &c But the more common attournment is to say, Sir, I attourne to you by force of the same grant, or I become your tenant, &c. or to deliuer vnto the grantee 1.d.ob. or farthing, by way of attournment, &c.

Also, if a man be seised of a mannor, which manor is parcel in demesne, & parcell in seruice,

if

if he will alien such a manor to another, it behoueth that by force of the alienatiō all the tenāts that hold of the alienor (as of this manor &c.) attourne to the Alienee, or otherwise the seruices abide cōtinually in the alienor, except tenāts at will, for it needeth not that tenāts at will attorn vpō such alienation, &c. for this that the same lāds or tenements ỹ they hold at will do passe to the alienee by force of such alienatiō

Also, if there be lord and tenant, and the tenant letteth the tenements to a man for terme of life, the remainder to another in Fee, if the lord grant the seruices to the tenant for terme of life in fee, in this case the tenant for terme of life hath fee in the seruices, but the seruices be put in suspence during his life, but his heires shall haue the seruices after his death, and in that case it needeth not attournment, for by the acceptance of the deed of him that ought to attourne, this is attournement in it selfe, &c. But where the tenant hath as great and high estate in the tenements as the Lord hath in the seigniorie, in such case if the Lord grant the seruice vnto the tenant in fee, this enureth by way of extinguishment, Causa patet.

Also, if there be lord & tenant, and the tenant maketh a leas to one for terme of life, sauing ỹ reuersion vnto him, if the Lord grant the seigniory to the tenāt for terme of life in fee, in this case it behoueth that he in reuersion attorne to the tenāt for term of life by force of the grant, or otherwise the grant is void, for this that he

in

in the reuersion is tenant to the Lord.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by twentie manner of seruices, and the Lord graunteth his seignorie to another, if the tenant pay or doe any of the seruices to the grauntee, this is a good attournement, of and for the seruices, though that the Tenants intent was to attourne but of the same parcell, for this that the Seignorie is an whole thing, though that there be diuers manner of seruices that the tenant ought to doe

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by many maner of seruices, and the Lord granteth the seruices to another by fine, if the grantee sue a Scire facias out of the same fine, for any parcell of the seruices, and had iudgement to recouer, this iudgement is a good attornement in the Law for all the seruices.

Also, if the Lord of the rent granteth the seruices vnto another, and the tenant attourneth by a peny, and after the grauntee distraineth for rent behind, and the Tenaunt to him maketh rescous: In this case the grauntee shall haue no Assise of the rent, but he shall haue a writt of Rescous, for that the gift of the peny was but by way of attournement. But if the tenant had giuen vnto the grantee the said peny as parcell of the rent, or a halfe penie, or a farthing, by way of seisin of the rent, then this is a good attournement, and also it

is

is a good seisin to the grantee of the rent, and then vpon such rescous the grantee shall haue an Assise, &c.

Also, if a man let Tenements for terme of yeres, by force of which the lessee is seised, and after the Lord granteth by his deed the reuersion to another for terme of life, or in taile, or in fee, it behoueth him in this case that the tenant for terme of yeares attorne, or otherwise nothing passeth to such grantee by such deed. And if in this case the tenant for terme of yeres attorne to the grantee, then by and by passeth the franktenement to the grantee by such attornement, without any liuery of seisin, &c. for this, if any liuery shall bee made, or needeth to bee made in such case, then the tenant for terme of yeres shall be at the time of the liuery of seisin out of his possession, which should be against reason.

Also, if Land be let to a man for terme of yeares, the remainder to another for terme of life, reseruing to the lessor a certain rent by the yeare, and liuery of seisin is made vpon this to the tenant for term of yeres, if he in the reuersion in such case grant his reuersion to another, &c. and the tenant that is in the remainder after the terme of yeres attorneth, this is a good attournment, and he to whom the reuersion is granted, by force of such attournment shall distraine the tenant for terme of yeares for the rent due after such attournement, though the tenant for terme of yeares neuer attorned vnto him,

him,and the cause is for that, where the reuer-
sion is dependant vpon the state of franktene-
ment,it sufficeth that the tenant of the frank-
tenement attorne vpon such grant of reuersion
&c. And it is to wit, that where a Lease for
terme of yeares,or for terme of life, or a gift in
the taile is made to any man, reseruing to such
a lessor or donor certaine rent,if such a lessor or
donor grant his reuersion to another, and the
tenant of the land attorne, the rent passeth to
the grantee,though in the deed of the graunt of
reuersion,no mention is made of the rent, for
this that the rent is incident to the reuersion
in such case,and not è conuerso, for if a man
will grant the rent in such case vnto another,
reseruing to him the reuersiō of the lād, thogh
the tenant attorne to the grantee,this shall bee
but a rent secke,&c.

Also,if a man let land to another for terme
of life,and after such leas he cōfirms by a deed
the estate of the tenant for terme of life, the re-
mainder to another in fee, and the Tenant for
terme of life accepteth the deede, then is the re-
mainder indeed to him to whom the remainder
was giuen or limited in the same deede, for by
the acceptance of the tenant for terme of life of
the same deed,this is a grant of him,& so an at-
tornement in law:but yet he in the remainder
shal haue none action of wast,nor other bene-
fit by such remainder, but if he haue the same
deed in his hand by which the remainder was
grāted vnto him,and for this that in such case

the

the tenant for terme of life will retaine to him the deed, to the intent that he in the remainder shall not haue an action of waſt againſt him, for this that he may not come to haue the poſſeſſion of the deed, &c. It ſhall be good in ſuch caſe for him in the remainder, that a deed indented be made by him that will make the cõfirmation, and the remainder ouer, &c. And he that maketh ſuch confirmation deliuer a part of the Indenture to the Tenant for terme of life, and the other part to him that hath the remainder, and then he by ſhewing of the part of the Indenture, may haue an action of waſt againſt the tenant for terme of life, & alſo other aduantage, that he in the remainder may haue in ſuch caſe.

Alſo, if two Iointenants be, which let land to another for terme of life, yeelding to them and their heires a certaine rent by yeare: In this caſe if one of the two Iointenants in the Reuerſion releaſe to the other Ioyntenant in the ſame reuerſion, this Releaſe is good, and he to whom the releaſe is made, ſhall haue onely the rent of the tenant for terme of life, and ſhall haue a writ of waſt againſt him, though he neuer attorned by force of ſuch releaſe: And the cauſe is, for the priuity that once was betweene the tenant for terme of life, and them in the reuerſion.

In the ſame manner, and for the ſame cauſe it is where a man letteth Land to another for terme of his life, the remainder to another

for

for terme of his life, reseruing the reuersion to the lessor, in this case if he in the reuersion releas to him in the remainder, &c. & to his heires all his right, &c. then he in the remainder hath a fee, &c. and shall haue a writ of waste against the tenant for terme of life without any attornement of him, &c.

Also, if a lease be made for terme of life, the remainder vnto another in the tail, the remainder ouer to the right heires of the Tenant for terme of life, in this case if the tenant for terme of life grant his remainder in fee to another by his deed, the remainder by and by passeth by his deed without any other attornement: For if that any ought to attorn in this case, it shold be the tenant for terme of life. And it were in vaine that he attorne vpon his owne grant, &c.

Also, if there be lord & tenāt, and the tenant holdeth of the Lord by certain rent & Knights seruices, if the Lord grant the seruices of the tenant by fine, the seruices be by and by in the grantee by force of the fine, but yet the Lord may not distrain for any parcel of his seruices without attornement. But if the tenant dye, his heires being within age, the lord shall haue the ward of the body of the heir and of the lād &c. howbeit that he neuer attorned: for this that the seigniory was in the grantee maintenant by force of the fine.

And also in such case if the tenant dis without heire, the Lord shall haue the tenancie by way of Escheat. In the same manner it is if a

man grant the reuersion of his tenãt for terme of life to another by fine, the reuersion passeth presently to the grantee by force of the fine, but the grantee shall neuer haue action of wast without attornement, &c. But yet if the tenant for terme of life alien in fee, the grantee may enter, &c. for this that the reuersiõ was in him by force of the fine, and such alienation was to his disinheritance. But in this case where the Lord granteth the seruices of his tenant by fine, if the tenãt die, his heire being of full age, the grantee by the fine shal not haue the reliefe, nor neuer shall distraine for the reliefe, except there had beene some attornement of the tenãt that died, &c. For of such things that lie in distresse, vpon the which a writ of Replegiare is sued, &c. a man ought to anosw the taking good and righteous, &c. and there ought to be attournement of the tenant, howbeit that the grant of such seruices be by fine. But to haue ward of lands and tenemẽts so holden during the nonage of the heir, or them to haue by way of Escheat, there needeth not any distresse, &c. but an entrie in the land by force of the right of the seigniory that the grantee hath by force of the fine.

Also, in auncient Boroughes or Cities where tenements within the same boroughes or Cities beene deuisable by testament by the custome and the vse, &c. if in such Borough or Citie a man be seised of rent seruice, or of rent charge, and he deuiseth such rent or seruice to

another by his testament and dieth, &c. in this case he to whom the deuise is made, may distrain for the rent or the seruices behind, howbeit that the tenant neuer attorned. In the same maner it is, where a man letteth such tenements deuisable to another for terme of life, or for terme of yeares, & deuiseth the reuersion by his testamēt to another in fee, or in fee taile, and dieth, and anon after that the tenant maketh wast, he to whom the deuise was made shall haue a writ of wast, howbeit that the tenant neuer attorned: and the cause is for this, that the will of the deuisor made by the Testament, shall be performed after the intent of the deuisor, and if the effect of this should bee vpon the attorning of the tenant, &c. then percase the tenant would neuer attorne, and then the will of the deuisor would neuer be performed, and therefore the deuisee shall distraine, or haue an action of wast without attornement. For if a man deuise such tenements to another by his testament (habend' sibi imperpetuum) and dieth, and the deuisee entreth, he hath a fee simple, Causa qua supra, and yet if a deed of feoffement were made to him by the deuisor of the same tenements (habendū & tenendū sibi imperpet') and liuery and seisin were thereupon made, he shall haue none estate but for terme of life, &c.

Also, if a man be seised of a mannor which is parcell in demesne, and parcell in seruices, and thereof be disseised, but the tenant

which holdeth of the mannor, neuer attorneth to the disseisor: in this case, howbeit that the disseisor die, &c. and his heire is in by discent, yet may the disseisee distrain for the rent being behind, and haue the seruice: But if the tenants come to the disseisor, & say, we become your tenants, &c. or otherwise make attournment to him. &c. and after the disseisor dyeth seised, &c. then the disseisee may not distraine for the rent, for that all the mannor descended to the heire of the disseisor. But if one hold of me by rent seruice, which is a seruice in grosse, & another that no right hath, claimeth the rent and receiueth and taketh the same rent of my tenant by coherion of distresse, or by other forme, and so disseiseth me by taking such rent, howbeit that such a disseisor die seised by such taking of the rent, yet after his death I may well distraine for the same rent being behind before the death of the disseisor, and also after his death: and the cause is this, that such is not by disseisor, but by election at my will: for howbeit that he took the rent of my tenant, I may at all times distrain my tenant for the rent behind, &c. so it is to me, but as if I will suffer the tenant to be by so much time behind of payment to me of the same rent: for the payment of my tenant to an other to whom he ought not to pay, is no disseisin to me, nor shall not put me out of my rent, without my will and election, for howbeit that I may haue assise against such a taker, &c. yet this is at my election if I will take him as my

disseisor

disseisor or not, so that such discents of rents in grosse ne putteth not out the Lords from their distresse, but that at each time they may well distraine for the rent behind: And in this case if after the decease of him that so wrongfully tooke the rent, I grant by my deed the seruices to another, & the tenant attorneth, this is good enough, and the seruices by such grant and attornment, incontinent be in the grantee, &c. but otherwise it is where the rent is parcell of the mannor, and the disseisor dieth seised of the whole mannor, as in the case beforesaid.

Discontinuance.

DIscontinuance is an ancient word in the law, and hath diuers significations, &c. but as to one intent it hath such a signification, that is to say, where a man hath aliened to another certaine lands or tenements & dieth, and another hath right to haue the same lands or tenemẽts, but he ne may enter in them, because of such alienation, &c. As if an Abbot be seised of certain lands & tenements in fee, and he alieneth the same lands & tenements to another in fee, or in taile or for terme of life, and the Abbot dieth, his successor may not enter in the same lands and tenements, howbeit that he haue right to haue them as in the right of the house but he is put to his action to recouer the same lands or tenements which is called a writ de Ingressu sine assensu capituli.

And if a man be ſeiſed of land as in the right of his wife, &c. and therof infeffeth another, &c. and dyeth, the wife may not enter, but ſhe is put vnto her action, the which is called Cui in vita. See ſtat. 32. H. 8. c. 28. Leaſes.

Alſo, if tenant in the taile of certaine land thereof infeoffe another, &c. and hath iſſue and dieth, &c. his iſſue may not enter in the land, howbeit that he hath right and title to that, but that he is put to his action, that is called a Formedon in the diſcender.

Alſo, if there be tenant in taile, and the reuerſion is to the donor and to his heires, if the tenant make a feoffement, &c. & dieth without iſſue, he in the reuerſion may not enter, but is put to his action of Formedon in the reuerter. And in the ſame maner it is where there is tenant in the taile of certaine land where the remainder is to another in the taile, or to another in fee, if the tenant in the taile alieneth in fee, or in fee taile, &c. & after dieth without iſſue they in the remainder may not enter, but bee put to their writ of Formedon in the remainder, &c. and for this that by force of ſuch feoffement, and ſuch alienations in the caſes aforeſaid, and in like caſes thoſe which haue title and right after the death of ſuch a Feoffor or alienor, may not enter, but be put to their actions vt ſupra, therefore ſuch Feoffements and alienations be called diſcontinuances.

Alſo, if a tenant in the taile be diſſeiſed, & he releaſeth by his deed to the diſſeiſor, and to his

his

heirs all the right that he hath in the same lād this is no discontinuāce, for this that nothing of right passeth to the disseisor but for terme of life of the tenant in the taile that made the release, &c. But by the feoffement of tenant in the taile a fee simple passeth by the same feoffement by force of liuery of seisin, &c. but by force of a releas, nothing passeth but the right he may lawfully & rightfully release without hurt or damage to other persons which thereto haue right after his decease, &c. & so it is a great diuersity betweene a feffemēt of the tenant in the taile, & a release of the tenant in the taile. But it is said, that if tenant in the taile in this case release to the disseisor, and bindeth him and his heires to warrantize, &c. and dieth, & this warranty discendeth to his issue, then that is a discontinuance because of warrantize, &c. But if a man haue issue a son by one wife which dyeth, & after he taketh another wife, & the tenements be giuen to him & his second wife, and to the heires of their 2 bodies ingendred, and they haue issue another sonne, then the second wife dieth, and after the tenant in the taile is disseised, and he releaseth to his disseisor all his right, &c. and bindeth him and his heires vnto warrantize, & dieth, this is no discontinuance to the issue in the taile by the second wife, but he may wel enter, &c. for this that the warrantize descended to his elder brother that his father had by his first wife.

In the same maner where the tenements be

discẽdable to the yonger son after the custom of borough English, which be intailed, &c. and the tenãt in the tail hath issue 2 sons & is disseised, & he releaseth to his disseisor all his right with warrãty & dieth, the yonger son may enter upon the disseisor notwithstãding the warrãtize, for this, that the warrantize descendeth to the elder son, for alway the warrantize descendeth &c. to him that is heire by the common law.

Also, if an Abbot be disseised, and he releaseth to the disseisor with warrantize, this is no discontinuance to his successor, for this, that nothing passeth by this release but the right that he hath during the time that he is Abbot, and this warrantize is expired by his priuation or by his death.

Also, if tenãt in the taile be seised of certaine land, and he letteth the same land for terme of yeares, by force of which lease the lesse is in possession, in which possession the tenant in the taile by his deed releaseth all his right that he hath in the same land to the Lessee and to his heires for euer, this is no discontinuance, but after the decease of the tenant in the taile, his issue may well enter, for this that by such releas nothing passeth but for terme of life of the tenant in the taile. In the same manner if the Tenant in the taile confirme the state of the lessee for terme of certaine yeres to haue and to hold to him and to his heires, that is no discontinuance, for this, that nothing passeth by such confirmation, but the estate that the tenant

nant in the taile had for terme of his life.

Also, if a tenant in the taile by his deed grāt to another all his estate that he hath in the tenements entailed to him, to haue and to hold all his estate to the other & to his heires for euer, & deliuereth seisin accordingly: In this case the tenant to whō the alienation was made, hath none other estate but for terme of life of the tenāt in taile, & so it may well be proued that the tenant in the taile may not grant ne alien ne make any rightful estate of the franktenement to another person but for term of his own life, &c. For if I giue certaine land in the taile to a man, sauing a reuersion to me, & after the tenāt in the taile enfeoffeth another in fee, the feoffee hath no right estate in the tenemēts, for 2 causes. One is, for that that by such feffement my reuersion is discontinued, which is a wrong act and not a rightfull act. Another cause is, if the tenant die, and his issue sueth a writ of Formdon against the feoffee, the writ shall say and also the declaration, that the feoffee wrongfully him deforced, therefore if wrongfully he him deforced, he had no right estate.

Also, if land be let to a man for terme of his life, the remainder to another in the taile, if he in the remainder will grant his remainder to another in Fee by his deed, and the tenant for terme of life attorneth, this is no discontinuance of the remainder. 615

Also, if a man be tenant in the taile of auowson in grosse, or of cōmon in grosse, if he by his deed

deed will grant the aduowſon or the common to another in fee, this is no diſcontinuance, for in ſuch caſe the grantee hath no eſtate but for term of life of the tenant in the taile that made this grant, &c. Note well that ſuch things as paſſe by way of grant made by deed, made in the countrey, &c. ſuch grant maketh no diſcontinuance, as in the caſe aforeſaid, and other like caſes, &c. And howbeit that ſuch be granted in fee, by fine leuied in the kings court, &c. yet they make no diſcontinuance, &c.

Alſo, if a man be ſeiſed in the taile of lands deuiſable by teſtament, &c. and he deuiſeth it to another in fee, and dieth, and the other entreth, this is no diſcontinuance, for this that no diſcontinuance was made in the life of the tenant in the taile, &c.

Alſo, if an Abbot haue a reuerſion, or a rent ſeruice, or a rent charge, and will grant that reuerſion, rent ſeruice, or rent charge to another in fee, and the tenant attorneth, &c. this is no diſcontinuance. In the ſame manner it is where an abbot is ſeiſed of an aduowſon, or of ſuch things that paſſe by way of grant without liuery of ſeiſin, &c.

Alſo, if there be Graundfather Tenant in the taile, father and ſonne, and the Graundfather is diſſeiſed by the father, and the father maketh a feoffement in fee without warrantize and dieth, and after the graundfather dyeth, the ſonne may well enter vpon the feoffee, for this that this was no diſcontinuance, in

ſo

so much that the father was not seised by force of the taile at the time of the Feoffement, &c. but was seised in Fee by disseisin made to the Grandfather.

Also, if a woman inheritrix haue an Husband within age, which maketh a feoffement of the tenements of the wife, and dieth, it hath beene questioned if the wife may enter, or not: And it seemeth to some men that the entrie of the wife after the death of her husband shalbe lawful in this case, for whē her husband made such a feoffement, &c. he might well enter notwithstāding such feoffement during the couerture, and he might not enter in his owne right, but in the right of his wife, &c. Ergo such right that he had to enter in the right of his wife, &c that right of entry abideth to the wife, &c. after his decease. And it hath beene said, that if two Iointenants being within age, make a feoffement in fee, and one of the children dieth, and the other suruiueth, insomuch that both childrē might enter iointly in their liues, this right of entry groweth all to him that suruiueth, and so he may enter into the whole, &c.

Also, the heire of the husband that made the feoffement within age may not enter, for this that no right discendeth to such an heire in the case aforesaid, for this that the husband had neuer any thing but in the right of the wife And also when a child maketh a feoffement being within age, this shall neuer grieue nor hurt him, but that he may wel enter, &c. & this shold

be

be against reason, that such a feoffement made by him that was not able to make such a feffement shall grieue or hurt other, to tolle other of their entries, &c. And for these causes it seemeth to some, that after the death of such a husband so being within age at the time of the feffement, &c. that his wife may well enter, &c.

Also, if a woman inheritrix taketh an husband and hath issue a son, and the husband dieth, and she taketh another husband, and the second husband letteth the lād that he hath in the right of his wife to another for term of his life and after the wife dieth, and after the tenāt for term of life surrendreth his estate to the secōd husband, &c. Inquire if the sonne of the wife may enter or not, in this case vpon the second husband during the life of the tenant for terme of life. But it is cleere law in this case, that after the death of the tenant for terme of life, the son of the wife may wel enter, for this that the discontinuance that was made all onely for terme of life is determined by the death of the same tenant for terme of life.

Also, if the parson or vicar of a church alien certaine lands or tenemēts parcell of his glebe &c to another in fee and dieth, or resigneth, &c. his successor may well enter, notwithstanding such alienation, as it is said in a Note Anno 2 H.4. Termino Mich. quæ sic incipit, Nota quod dictum fuit pro lege, In a writ of Accompt brought by the Master of a Colledge, that if a parson or a vicar grant certaine land

that

that is of the right of his church to another, & dieth, or changeth, that his successor may enter: And I trow the cause is for this, that the parson or Vicar that is setled, &c. in right of the Church hath no right of the fee simple in the tenements, but the right of the fee simple abideth to another person: And for this cause his successor may wel enter, notwithstãding such alienation, &c. for a Bishop may haue a writ of right of tenements of right of his bishopricke, for this, that the righe of fee simple abideth in him & in his chapter. And a Dean may haue a writ of right, &c. for this, that the right abideth in him and in his chapter. And an Abbot may haue a writ of right, for that the right abideth in him and in his couent, & sic de alijs casibus consimilib' &c but a parson or a vicar may not haue a writ of right, &c. but the highest writ ꝙ they may haue is a writ de iur vtrũ, the which is a great proofe, that the right of fee simple is in abeiance, that is to say, all only in the remẽbrance, intendemẽt, & consideration of the law: for me seemeth that such a thing & such a right that is said in diuers bookes to be in abeiãce, is as much to say in latin, s. talis res, vel tale rectũ quæ vel qd' non est in homiñ adtunc superstite sed tantũmodo est & consistit in consideratione & intelligentia legis, &c. & quidã alij dixerunt talẽ rem, aut tale rectũ fore in nubibus, &c. but I suppose that they vnderstand these words in nubibus, &c as I haue said before.

Also, if a Parson of a Church die, now the frank-

franktenemēt of the glebe of the parsonage is in no man, during the time that tht parsonage is void, but is in abeiance, that is to say, in cōsideration and intelligence of the Law, til another be made Parson of the same Church, and immediatly when another is parson, the frāktenement in deed is to him as successor.

Also, some men peraduenture will argue and say, that insomuch ỹ the parson with the assent of the patron and ordinary, may grant a rent charge out of the glebe of his parsonage in fee, & so charge the glebe of his parsonage perpetually, Ergo they haue fee simple, or 2 or one of them hath fee simple at the least, &c. so thus it may be answered, that it is a principle in law that of euery land there is a fee simple in some man, or els the fee simple is in abeiāce, &c. And another principle is, that euery land of fee simple may be charged with a rent charge in fee, by one way or by another, &c. & when such rēt is granted by the deed of the parson, the patron & the ordinary in fee, none shall haue no preiudice nor losse by force of such grant, but the grantors in their liues, and the heire of the patron, & successor of the Ordinary after their deceases, & after such charge if the parsō die, his successor may not come to the same Church to be parsō of the same church by the law, but by presentment of the patron, and admission & institution of the ordinary, &c. And for this cause it behoueth that the sucoessor hold him content and agreed with that which his Patron and

Ordi-

ordinary lawfully haue done before. But the cause that such rent charge is gone, is, for that they which haue entries in the said Church, that is to say, the patron after the law temporal, and the Ordinary after the law spirituall, were assented as parties vnto such a charge, &c. and this seemeth the very cause that such glebe may be charged in perpetuitie, &c. See Stat. 31. Eliz. cap. 20.

Also, if a bishop alien lands which bin parcel of his bishopricke, & dieth, this is a discontinuance to his successor, for this, that he may not enter, but is put to his writ de Ingressu sine assensu capituli, &c See Stat. 1. Eliz.

Also, if a Deane alien land, parcell of his deanry, and dieth, his successor may not enter, but he may haue a writ de Ingressu sine assensu capituli, &c See Stat. 13. Eliz cap. 10.

But if the Deane & the Chapter haue land to them and to their successors in common, &c. Howbeit that the Deane alien such lands, his successors may well enter, for that the franktenement at the time of the alienation, was as well in the Chapter, as in the Deane. But where the deane is sole seised as in right of his deanry, then such alienation is discontinuance to his successor, as it is aforesaid.

Also, some men will argue & say, that if an Abbot & his Couent be seised in their demean as of fee, of certain land to them & to their successors, &c. & the Abbot without assent of his Couent alieneth the same land vnto another,

and

and dieth, this is a discontinuãce to his succes-sors, &c. & by the same they will say, that where a Dean & a Chapter is seised of certaine land to them & to their successors, if the Dean alien the same lands, &c. this shalbe a discontinuance to his successors, so that his successor may not enter, &c. To this may be answered, that there is a great diuersity betweene the said 2 cases, for when an Abbot & the Couent be seised, &c. yet if they be disseised, the abbot shal haue assise in his owne name, without the naming of his couent, &c. And if a man may or will sue a Præcipe qđ reddat of the same lands when they be in the hands of the Abbot and his Couent, it behoueth that such an action be sued against the Abbot only without naming of the couẽt, &c. for that all they be dead persons in the law, saue only the Abbot that is soueraigne, &c. and this is because of the soueraigntie, &c. for else he should be as the other Monkes of the Couent, &c. But the Deane and the chapter be no dead persons in the law, &c. For each of them may haue an action by himself in diuers cases, and of such Lands or Tenements which the Deane and Chapiter haue in Common, &c. if they be disseised, that the Dean and the chapiter shall haue assise, & not the Deane alone, and if another will haue an action real of such lãds or tenements against the Dean, &c. it behoueth him to sue against the Deane & Chapiter, and not against the Deane alone, &c. and so appeareth great diuersity betweene these two cases.

Also,

Also, if the Master of an Hospitall discontinue certaine land of his hospita., his successor may not enter, but he is put vnto his writ De ingressu sine assensu cõfratrum & sororũ suarum. And all such writs do plainly appeare in the Register, &c.

Remitter.

REmitter is an ancient terme in the Law, and it is where a man hath two Titles to lands or Tenements, that is to say, one of an elder Title, & another of a later Title, and he commeth to the land by the later Title, yet the law adiudgeth him to be in by force of the elder Title, for that the elder title is the more sure Title, and the more worthy Title, and then when a man is iudged in by force of the more elder Title, this is vnto him said a Remitter, for this, that the Law shall admit him to be in the land by the elder title: as if the tenant in the taile discontinue the taile, & after he disseiseth the discontinuee, & so dieth seised, whereby the Tenements discend to his issue, or to his cosin inheritable by force of the taile: in this case this is to him to whom the tenemẽts discend which had right by force of the taile, a remitter in the taile, for that, that the Law shall put and adiudge him to be in by force of the taile, which is his elder title: for if he shalbe in by force of discent, then the discontinuee may haue a writ of Entry vpon the disseisin in the Per against him, & recouer the tenements, and

his damages, but insomuch that he is in by force of the taile, the title & the interest of the discontinuee is all vtterly adnulled and defeated, &c.

Also, if tenant in the taile infeoffee in fee his sonne or his cosin inheritable by force of the taile, the which sonne or cosin at the time of the feoffement is within age, and after the tenant in the taile dieth, and he to whom the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffement is made. For howbeit that during the life of the tenant in the taile that made the feoffement, such heire shalbe adiudged in by force of the feffemēt, yet after the death of the tenant in the tail, the heir shalbe adiudged in by force of the taile, &c. and not by force of the feoffement, and though that such an heire was of ful age at the time of the death of the Tenant in the taile that made the feoffement, this maketh no matter, if the heire were within age at the time of the feoffement made to him. And if such an heire being within age at the time of the feoffement commeth to ful age, liuing the tenant that made the feoffement, & so being of full age, he chargeth by his deed the same land with a common of pasture, or with a rent charge, and after the tenant in the taile dieth: Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by another estate in the Land, than he was at the time of the charge made

made, insomuch y he is in his remitter by force of the taile, and so the estate that he had at the time of the charge is vtterly defeated, &c.

Also a principal cause why such an heire in the cases aforesaid, and other cases semblable shall be said in his Remitter, is for this, that there is no person against whom that he may sue his writ of Formedon, for against himselfe he may not sue, & he may not sue against none other, for none other is tenant in the Franke-tenement, and for that cause the law adiudgeth him in his Remitter, that is to say, in such plight, as he had lawfully recouered the same land against another.

Also, if land be tailed to a man and his wife, and to the heires of their two bodies engendred, the which hath issue a daughter, and the wife dieth, and the husband taketh another, and hath issue another daughter, and discontinueth the taile, and after he disseiseth the discontinuee, and so dyeth seised, now the Land descendeth to the two daughters: In this case as to the elder daughter that is inheritable, this is a Remitter but of the halfe, & as to the other halfe, she is put to her action of Formedon against her sister, for in this case the two sisters be not tenants in parcenary, but be tenants in common, for this that they be in by diuers titles, for the one sister is in her Remitter by force of the taile as to that that vnto her belongeth: and the other sister is in, as to that that belongeth to her, in Fee simple by the

discēt of her father. In the same maner it is if the tenant in the taile, infeoffe his heire apparant in the taile, the heir being within age, and another Iointenant in fee, and the tenāt in the taile dieth, now the heire in the taile is in the Remitter, as to the halfe, and as to the other halfe he is put to his writ of Formedon, &c.

Also, if a tenant in the taile infeoffe his heire apparāt, the heire being at full age at the time of the feoffement, and after the tenāt in the tail dieth, this is no Remitter to the heire, for this, that it was his own folly, that he being of full age would take such feoffement, &c. But such folly may not be adiudged in the heire being within age at the time of the feoffement, &c.

Also, if a tenant in the taile infeoffe a woman in fee, and dieth, & his issue within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this that the husband and the wife be but one persō in the law: And in that case the husband may not sue a writ of Formedon, vnlesse he will sue against himselfe, the which shall be inconuenient, and for that the Law iudgeth the heire in his Remitter, for this, that no folly may be arretted to him being within age at the time of the espousals, &c. And if the heire be in his Remitter by force of the taile, it followeth by reason that the wife hath nothing, &c. for inasmuch that the husband & the wife be but one person, the land may not be seuered by halfes, and for such cause the Husband is in his Remitter of

the

the whole. But otherwise it is, if such an heire be of full age at the time of the spousals, then the heire hath nothing but in the right of his wife.

Also, if a woman seised of certaine land in fee taketh an husband, the which alieneth the same Land to another in fee, and the Alienee letteth the same Land to the husband and the wife for terme of their two lines, sauing the reuersion to the lessor and to the heire, in this case the wife is in her Remitter, and she is seised in deed in her demesne as in Fee, as she was before, for this, that the taking of estate shalbe adiudged in the law the deed of the husband, and not the deed of the wife, so that no folly may be iudged in the wife that is couert in such case: And in this case the lessor hath nothing in the reuersion, for this that the wife is seised in Fee. But in this case, if the lessour will sue an action of waste against the husband and his wife, for this that the husband hath made waste, the Husband may not barre the Lessour for to shew this, that the taking of estate made vnto him and to his wife, made a Remitter to his wife, for this that the Husband is stopped to say this against his feoffement and owne repriseil of estate for terme of life to him and his wife, and yet the Lessour hath no reuersion, for that the fee simple is in the wife. So a man may see a matter in this case, that a man shall be stopped by a matter in deed, though no writing by deed indented,

or otherwise be thereof made. But if in an Action of wast the husband make default at the grand distresse, and the wife prayeth to be receiued, and is receiued, she shall well shew all the matter, and how she is in her remitter, and shall barre the lessor of his action: For in euery case that the wife is receiued for default of her husband, she shall plead, and haue the same aduantage in pleading, as shee were a woman sole. And howbeit that the Alienee made no lease to the husband and his wife by deed indented, yet this is a Remitter to the wife, and though the Alienee yelded the same Land to the husband and his wife by fine for terme of their liues, yet this is a Remitter to the wife, for this, that the wife couert that taketh estate by fine shall not be examined by the Justices. And here note well, that when any thing shall passe from the wife that is couert of husband by force of a fine, as the husband & wife make conusance of right to another, &c. or make a grant to yeeld to another, or release by a fine to another, & sic de similibus, where the right of the wife passeth frō the wife by force of the same, the wife in all such cases shall be examined before that the fine be accepted. And such fines cōclude such wiues couert for euer. But where nothing is moued in the fine, but all only that the husband & the wife take estate by force of the same fine, this shall not conclude the wife, for this, that in such case she shall neuer be examined.

Also

Also, if tenant in the taile discontinue in the taile, & hath a daughter & dieth, & the daughter being of full age taketh an husband, & the discontinuee maketh a lease of this to the husband and his wife for terme of their liues, this is a Remitter in deed to the wife, and the wife is in by force of the taile, Causa qua supra.

Also, if land be giuen to the husband and his wife, to haue and to hold to them and to the heires of their two bodies begotten, & after the husband alieneth the land in fee, and taketh againe an estate to him & to his wife for terme of their two liues. In this case this is a Remitter in deed to the husband & the wife, mauger the husband, for it may not be a Remitter to the wife, except it be a Remitter to the husband, for this, that the husband & his wife be but one person in the law, though that the husband is stopped to claime this to be a Remitter in him against his alienation, and his own repriſell, as is aforesaid.

Also, if land be giuen to a womã in the taile, the remainder to another in the taile, the remainder to the third in the taile, the remainder to the fourth in fee, & the wife taketh an husband, & the husband discontinueth the land of his wife, by this discõtinuance all the remainders be discõtinued, for if the wife die without issue, they in remainder shal haue no remedy, but to sue their writs of Formedon in the remainder whẽ they come to their time, &c. But if after such discontinuance, estate be made to

the husband and his wife for terme of their two liues, or for terme of anothers life, or another estate, &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder, &c. For after this that the wife, that is in her Remitter, dieth without issue, they in the remainder may enter, &c. without an action or suit, &c. In the same manner it is of them which haue the reuersion after such taile, &c.

Also, if a man let an house to a woman for terme of her life, sauing the reuersion to the lessor, and after one sueth a faint & false action against the woman, and recouereth the house against her by default, so that the woman may haue against him a writ of Quod ei deforceat, after the Statute of westminster the second chapter 4. now is the reuersion of the lessour discontinued, so that he may not haue an action of waste. But in this case, if the woman take an husband, and hee that recouereth letteth the house to the husband and his wife for term of their two liues, the wife is in her Remitter by force of the first Lease. And if the husband and the wife make waste, the first lessor shall haue against him a writ of waste, for this, that inasmuch that the wife is in her Remitter, he is remitted to his reuersion. But it seemeth in this case, if he that here commeth by the false Action, will bring another writ of waste against the Husband and his wife, the Husband hath no remedie against him,

him, but to make default at the great distresse &c. and to cause the wife to be receiued and to plead the matter against the second lessor, and to shew that the action by which he recouered was false and fained in the Law, and so the wife may barre, &c.

Also, if the husband discontinue the land of his wife, and after taketh estate to him and to his wife, and a third man for terme of their liues, or in fee, this is a Remitter to the woman but as to the moity. And as for the other moitie it behoueth her after the death of her husband to sue a Cui in vita.

Also, if the husband discontinue the land of his wife, and go ouer the Sea, and the discontinuee let the same land to the womã for terme of life, and deliuer to her seisin, and after the husband commeth and agreeth to that liuerie of seisin, this is a remitter to the woman, and yet if the woman had beene sole at the time of her Lease made to her, this should be to her no Remitter, but insomuch as she was couert baron at the time of the Lease, and the liuerie of seisin made to her, though that she only take the liuery of seisin, this was a remitter to her, because a woman couert shalbe adiudged as an Infant within age in such case, &c. Inquire in this case if the husband when he commeth againe will disagree to the lease and liuerie of seisin made to his wife in his absence, if this shall put the woman from her Remitter.

Also, if the husband discontinue the tene-

ments

ments of his wife, and the discontinuee is disseised, and after the disseisor letteth the said tenements to the husband and his wife for term of life, this is a Remitter to the wife: but if the husband and the wife were of couin & consent that the disseisin should be made, then it is no remitter to the wife, because she is a disseisoresse. But if the husband were of couin & consent to the disseisin, and not the wife, then such lease made to the wife is a Remitter, because that no default was in the wife.

Also, if such a discontinuee had made estate of freehold to the husband & the wife, by Indenture vpon condition, & reseruing to the discontinuee a certaine rent, & for default of payment a reentry, and because that the rent is behind, the discontinuee entreth, of this rent the womã shal haue Assise of Nouel disseisin, after the death of her husband against ꝑ discontinuee because that the condition was wholly annulled, insomuch as the woman was in her remitter, yet the husband with his wife could not haue assise, because the husband is stopped.

Also, if the husband discontinue the Tenements of his wife, and taketh estate agains for terme of his life, the remainder after his decease to his wife for terme of her life, in this case this is no Remitter to the wife during the life of her Husband, because that during the life of the Husband, the wife hath nothing in the Freehold, but if in this case the wife ouerliue the husband, this is a Remitter

to

to the wife, because that a Freehold in law is fallen vpon her, mauger her wil, and insomuch that she can haue no action against none other person, and against her selfe she can haue no action, therefore she is in her Remitter, for in this case though that the womā enter not into the tenements, yet a stranger that hath cause to haue action, may sue his action against the woman of the same tenements, because she is Tenant in Law, though she be not Tenant in deed, for Tenant of Franktenement in deed is he, that if he be disseised of franktenemēt, may haue Assise, but the Tenant in the law before his entry shall haue no Assise: & if a man seised in fee of certaine land hath issue a sonne which taketh a wife, and the Father dieth seised, and after the sonne dieth before any entry made by him into the land, the wife of the sonne shall be endowed in the land, & yet he had no frāktenement in deed, but he had a fee & a franktenemēt in law. And note well, that a Præcipe qđ reddat may be aswel maintained against him that hath the Franktenement in Law, as against him that hath Franktenement in deed.

Also, if a tenant in the taile hath issue two sonnes at full age, and he letteth the tayled land to the elder sonne for terme of his life, the remainder to the yonger sonne for terme of his life, and after the tenant in the taile dieth: In this case the elder son is not in his remitter, because he tooke estate of his father, but if the elder sonne dye without issue of his body, then

then this is a remitter of the yonger brother, because he is heire in the taile, and a franktenement in law is fallen vpon him by force of the remainder, and there is none against whom he may sue his action, &c. In the same maner it is where a man is disseised, and the disseisor dieth thereof seised, and the tenements discend to his heire, and the heire of the disseisor maketh a lease to a man of the said tenements for term of life, the remainder to the disseisee for terme of life, or in taile, or in fee, and the Tenant for terme of life dieth, now this is a Remitter to the disseisee, &c. Causa qua supra.

Also, if a tenant in the taile infeoffe his son and another of the tailed Land in fee, and liuerie of seisin is made to the other according to the deed, the Sonne not knowing thereof, nor agreeing to the Feoffement, and after he that tooke the Liuerie of seisin dyeth, and the sonne occupieth not the Land, nor taketh any profit of the Land during the life of his father, and after the Father dieth, now this is a Remitter to the sonne, because the freehold is fallen vpon him by the suruiuor, and no default was in him, because he neuer agreed, &c. in the life of his Father, and there is none against whō he may pursue his writ of Formedon, &c. For if a man be disseised of certaine Land, and the disseisor maketh a deed of feoffement, whereof he infeoffeth B. C. and D. and the liuerie of seisin is made to B. and C. but D. was not at the Liuerie of seisin, nor neuer

agreed

agreed to the feoffement, nor neuer would take the profits, &c. And after B. and C. die, and D. ouerliueth them, and the disseisee bringeth his writ sur disseisin in the Per, against the same D. he shall shew all the matter, & how that he neuer agreed to the feoffement, and so he shall discharge himselfe of damages, so that the demandant shal recouer no damage against him, though ỹ he be tenant of the franktenement of the land: And yet the statute of Glocester will, that the disseisee shall recouer damage in a writ of Entre, grounded vpon the Nouel disseisin, against him that is found tenant. And this is a proofe in the other case, that insomuch as the issue in the tail commeth to the franktenement not by his deed, nor by his agreement, but after the death of his father, this is a Remitter to him, insomuch that he can sue an action of Formedon against none other person.

Also, if an Abbot alien the land of his house to another in fee, and the Alienee by his deed chargeth the land with a rent charge in fee, and after the alienee infeoffeth the Abbot with licence, to haue and to hold to the Abbot and his successours for euer, and after the Abbot dieth, and another is chosen and made Abbot: In this case the Abbot that is successor, & his Conuent be in their Remitter, and shal hold the land discharged, because that the same Abbot cannot haue an Action by his writ of Entre sine assensu Capituli of the same lands against none other person. In the same manner it is

where

ſo here a Biſhop or Dean, or other ſuch perſon alien, &c. without aſſent, &c. And after the Biſhop taketh eſtate againe of the ſame land by licence to him, and to his ſucceſſors, and after the Biſhop dyeth, his ſucceſſor is in his Remitter as in the right of his Church, and ſhall defeat the charge, &c. Cauſa qua ſupra.

Alſo, if a man ſue a falſe Action againſt tenant in the taile, as if a man will ſue againſt him a writ of Entre in the Poſt, ſuppoſing by his writ that the Tenant in the taile had not his entry but by A. of B. that diſſeiſed the Graundfather of the demandant, and that is falſe, and he recouereth againſt the Tenant in the taile by default, and ſueth execution, and after the tenant in the taile dieth, his iſſue may haue a writ of Formedon againſt him that recouered: And if he will plead the recouerie againſt the Tenant in the taile, the iſſue may ſay, that the ſaid A. of B. diſſeiſed not the Graundfather of him that recouered in ſuch maner, as his writ ſuppoſeth, and ſo he ſhall falſifie his recouerie. Alſo, ſuppoſe that that was true, that the ſaid A. of B. diſſeiſed the graundfather of the demandant that recouered, and that after the diſſeiſin the demandant or his father, or his Grandfather, by a deed had releaſed to the Tenant in the taile, all the right that he had in the land, &c. And this notwithſtanding hee ſueth his writ of Entre in the Poſt againſt the tenant in the tayle, in the manner as is aforeſaid, and the tenant in the

taile

taile pleadeth to him, that the said A. of B. disseised not his Grandfather, as his writ supposeth: and vpon this they be at issue, and the issue is found for the demandant, whereby he hath iudgement to recouer, and sueth execution, and after the Tenant in the taile dieth, his issue may haue a writ of Formedon against him that recouered. And if hee will plead the recouery by action tried against his Father tenant in the taile, then he may shew and plead the release made to his Father, and so the action that was sued was faint in the Law, &c.

And it seemeth that faint action is as much to say in English, as fained action, that is to say, such action, that though the words of his writ be true, yet for certaine causes he hath no cause nor title in the Law to recouer by the same Action. And false Action is where the words of the writ be false: And in the two cases before said, if the case were such that after such a recouerie and execution thereof made, the tenant in the taile had disseised him that recouered, and thereof died seised, whereby the land also descended vnto his issue, this is a Remitter to the issue, and the issue is in by force of the taile: And for that cause I haue put these two Cases aforesaid, to informe thee (my Sonne,) that the issue in the taile, by force of a discent made to him after a recouery and execution thereof made against his ancester, may be as well in his Remitter,

as

as he should by descent made to him after a discontinuance made by the ancester of the tailed land by feoffement in the countrey, or otherwise.

Also, in the same case aforesaid, if the case were such that after the demãdant hath judgement to recouer against the tenant in taile, and the same tenant in the taile died before any execution had against him, whereby the Tenements descend to his issue, and he that recouered sued a Scire facias to haue execution of the iudgement against the issue in the taile, the issue shal plead the matter, as before is said, and so shall proue that the recouerie was false or faint in the law, and so shall barre him to haue execution of the iudgement, &c.

Also, if the tenant in the tail discontinue the taile and dye, and his issue bringeth a writ of Formedon against the discontinuee being tenant of the freehold of the land, & the discontinuee pleadeth that he is not tenant, but otherwise disclaimeth from the tenancy in the land: In this case the iudgement shalbe, that the tenant go without day, & after such iudgement, the issue in the taile that is demãdant may well enter in the land, notwithstanding the discõtinuance. And by such entry he shalbe adiudged in his Remitter, & the cause is, because that if any man sue a Præcipe qđ reddat against any tenant of freehold, in which action the demandant shall not recouer damages, & the tenant pleadeth Nontenure, or otherwise disclaymeth

meth in the tenancy, the demandant may not auer in the writ, that he is tenant as the writ supposeth. And for that cause the demandant after that the iudgement is giuen, that the tenant shall go without day, may enter into the tenements demanded, the which shall be as great aduantage to him in the Law, as if he had iudgement to recouer against the tenant. And by such entrie he is in the Remitter by force of the taile: but where the demandant recouereth dammages against the tenant, there the demandant may auerre that he is tenant as the writ supposeth, and that for the aduantage of the demandant for to recouer his dammages, or else he shall not recouer his dammages, the which damages be or were giuen him by the Law.

Also, if a man be disseised, and the disseisor dye, his heire being in by discent, now the entrie of the disseisee is taken away. And if the disseisee bring his writ of Entre vpon the disseisin in the Per against the heire, and the heire disclaimeth in the tenancy, &c. the demandant may auerre his writ, that he is tenant as the writ supposeth, if he will, for to recouer his damages. But yet if he will leaue the auerment &c. he may lawfully enter into the lād, because of the disclaimer, notwithstāding that his entry before was taken away. And that was adiudged before my master Sir Robert Danby, late chiefe Iustice of the Common place, and his companions, 5. E. 4. fol. 1. & 45.

Also, where the entry of a man is lawfull, though that he take estate to him when he is of full age for terme of life, or in taile, or in fee, this is a Remitter to him, if such taking of estate be not by deed indented, or by matter of record that shall conclude or stop him: for if a man be disseised, and thereof taketh estate of the disseisor without deed, or by deed Poll, that is a good Remitter of the disseisee.

Also, if a man let land for terme of life to another, which alieneth to another in fee, & the alienor maketh estate to y lessor, this is a remittor to the lessor, because his entry was lawful

Also, if a man be disseised, and the disseisor letteth the land to the disseisee by deed poll, or without deed for terme of yeres, whereby the disseisee entreth, this entry is a Remitter to the disseisee: for in such case where the entrie of a man is lawfull, & a lease is made to him, though that he claime by words in the countrey, that he hath estate by force of such Lease, or saith openly that he claimeth nothing in the land, but by force of such Lease, yet this is a Remitter to him, for such claime in the countrey is nothing to purpose: but if he claime in a Court of Record, that he hath estate but by force of such lease and not otherwise, then he is concluded, &c.

Also, if two Jointenants seised of certaine land in fee, the one being of full age, the other within age be disseised, & the disseisor dieth seised, and his issue entreth, the one of the iointe-

nants

nants being then within age, & after that he commeth to ful age, the heir of the disseisor letteth the land to the same iointenants for term of their liues, this is a remitter as to the halfe to him that was within age, because that he is seised of the moity that belongeth to him in Fee, because his entry was lawfull. But the other iointenant hath in the other halfe but estate for terme of life by force of the lease, because his entry was taken away, &c.

Warrantie.

IT is commonly said, that there be three maner of warranties, that is to say: warranty lineall, warranty collaterall, and warrantie that beginneth by disseisin. And it is to wit, that before the statute of Glouceſter, all warranties which descended to them which were heires to them that made the warranty, were bars to the same heires to demand any lands or tenemēts against those warranties, except the warrāties that began by disseisin, for such warranty was neuer barre to the heire, because the warranty began by wrong, that is to say, by disseisin.

Warranty that beginneth by disseisin is in such forme: As where there is father and son, and the son doth purchase land, &c. and letteth the same land to his father for terme of yeres, and the father by his deed therof infeoffeth another in fee, and bindeth him and his heirs to

warranty, & if the father die wherby the warranty discendeth to his sonne, this warrantie shall not barre the sonne, for notwithstanding this warranty, the sonne may well enter into the land, or haue an assise against the alienee if he will, because the warranty began by disseisin: for when the father that had no estate but for terme of yeres made a feffement in fee, this was a disseisin to the son of the franktenemēt that then was in the son. In the same manner it is, if the sonne let vnto the father the land to hold at will, & after ꝑ father maketh a feffemēt with warrāty. &c. And as it is said of the father, so it may be said of euery other ancester, &c.

In the same maner it is if tenant by Elegit, tenant by statute merchant, or tenant by statute staple, maketh a Feoffement in Fee with warranty, &c. this shall not bar the heire that ought to haue the land, because that such warranties begin by disseisin.

Also, if a warden in chiualry, or warden in socage, make a feffemēt in fee, in fee taile, or for term of life with warrāty, &c. such warrāties be no bars to the heires to whom the land shal descend, because that they begin by disseisin.

Also, if the father and the son purchase certaine lands or tenements, to haue & to hold to them to intly, &c. and after the father alieneth the whole to another, and bindeth him and his heires to warranty, &c. and after the father dieth, this warranty shal not barre the sonne of the moity that belongeth vnto him of the same tene-

tenement, because ỹ as to the moity that belonged to the son, the warranty began by disseisin

Also, if A. of B. be seised of a mease, and F. of G. that hath no right to enter into the same mease, claiming to hold the same mease to him & to his heires, enter into the same mease, but A. of B. then is continually dwelling in the same mease, in this case the possession of the franktenemēt shalbe alway adiudged in A. of B. & not in F. of G. because that in such case where two be in one mease, or in other tenements, & the one claimeth by one title, and the other by another title, ỹ law shall adiudge him in possession that hath right to haue the possession of the same tenement. But in the case aforesaid, if F. of G. make a feoffement to certaine barretors & extortioners in the countrey for to haue maintenance of them of the same mease, by a deed of feoffement with warranty by force of which the said A. of B. dare not dwel in the same mese, but goeth out of ỹ same mese, this warranty beginneth by disseisin, because such a feffement was cause that the said A. of B. left the possession of the same mease.

Also, if a man that hath no right to enter in anothers tenements, enter into the said tenements, and incontinently maketh a feoffement to other persons by his deed with warranty, and deliuereth to them seisin, this warranty beginneth by disseisin, because that the disseisin and the feoffement were made as it were at one time. And that this is Law, ye

warranty, & if the father die wherby the warranty discendeth to his sonne, this warrantie shall not barre the sonne, for notwithstanding this warranty, the sonne may well enter into the land, or haue an assise against the alienee if he will, because the warranty began by disseisin: for when the father that had no estate but for terme of yeres made a feffement in fee, this was a disseisin to the son of the franktenemēt that then was in the son. In the same manner it is, if the sonne let vnto the father the land to hold at will, & after ỹ father maketh a feffemēt with warrāty. &c. And as it is said of the father, so it may be said of euery other ancester, &c.

In the same maner it is if tenant by Elegit, tenant by statute merchant, or tenant by statute staple, maketh a Feoffement in Fee with warranty, &c. this shall not bar the heire that ought to haue the land, because that such warranties begin by disseisin.

Also, if a warden in chiualry, or warden in socage, make a feffemēt in fee, in fee taile, or for term of life with warrāty, &c. such warrāties be no bars to the heires to whom the land shal descend, because that they begin by disseisin.

Also, if the father and the son purchase certaine lands or tenements, to haue & to hold to them to intly, &c. and after the father alieneth the whole to another, and bindeth him and his heires to warranty, &c. and after the father dieth, this warranty shal not barre the sonne of the moity that belongeth vnto him of the same tene-

tenement, because ỹ as to the moity that belonged to the son, the warranty began by disseisin

Also, if A. of B. be seised of a mease, and F. of G. that hath no right to enter into the same mease, claiming to hold the same mease to him & to his heires, enter into the same mease, but A. of B. then is continually dwelling in the same mease, in this case the possession of the franktenemẽt shalbe alway adiudged in A. of B. & not in F. of G. because that in such case where two be in one mease, or in other tenements, & the one claimeth by one title, and the other by another title, ỹ law shall adiudge him in possession that hath right to haue the possession of the same tenement. But in the case aforesaid, if F. of G. make a feoffement to certaine barretors & extortioners in the countrey for to haue maintenance of them of the same mease, by a deed of feoffement with warranty by force of which the said A. of B. dare not dwel in the same mese, but goeth out of ỹ same mese, this warranty beginneth by disseisin, because such a feffement was cause that the said A. of B. left the possession of the same mease.

Also, if a man that hath no right to enter in anothers tenements, enter into the said tenements, and incontinently maketh a feoffement to other persons by his deed with warranty, and deliuereth to them seisin, this warranty beginneth by disseisin, because that the disseisin and the feoffement were made as it were at one time. And that this is Law, ye

may ſee it in a plee Anno 31. Edwardi tertij in a writ of Formedon in the Reuerſion, Gar' Fitzh. 28.

Warranty lineall, is where a man ſeiſed of certaine lands in fee, maketh a Feoffement by his deed to another, and bindeth him and his heires to warranty, & hath iſſue and dieth, and the warranty diſcendeth to his iſſue, this is a lineall warranty: and the cauſe why this is a lineall warranty, is not becauſe that the warranty diſcendeth from the father to his heire, but the cauſe is, becauſe that if no ſuch deed with warranty had beene made by the father, then the right of the tenements ſhould deſcend to the heire, and the heire ſhould conuey the diſcent from the father, &c. For if there be father and ſonne, and the ſonne purchaſe Tenements in fee, and the father diſſeiſeth the ſonne therof, and alieneth it to another in fee by his deed, and by the ſame deed bindeth him & his heires to warrant the ſame tenements and ſo forth, and the father dieth, now is the ſon barred to haue the ſaid tenements, for he may by no ſuit, nor by any other meanes haue the ſaid tenements, becauſe of the ſaid warranty: And this is a collaterall warranty, & yet the warranty deſcendeth lineally frō the father to the ſon. But becauſe y if no ſuch deed with warrāty had bin made, the ſon in no maner might conuey the title that he hath of the tenements frō his father to him, inſomuch that his father had no eſtate nor right in the tenements, therfore

fore such warranty is called collaterall warranty: Insomuch that he that made the warrantie is collaterall to the title of the tenements, and that is as much to say, that he to whom the warranty discended, could not conuey the title that he had in the tenements by him that made the warranty in this case, if no such warranty had beene made.

Also, if there be grandfather, father, and son, and the grandfather is disseised, in whose possession the father releaseth by his deed with warranty, &c. and dieth, and after the grandfather dieth, now is the sonne barred of the tenements by the warranty of his father, & this is called lineall warranty, because that if no such warranty had bin made, the sonne might not haue conueyed the right of the tenements to him, nor shew how he is heire to the grandfather, but by meanes of the father, &c.

Also, if a man haue issue three sonnes and is disseised, and the elder sonne releaseth to the disseisor by his deed with warrantie, &c. and dieth without issue, and after this the father dieth, this is a lineall warranty to the yonger sonne, because that though the elder son died in the life of the Father, yet by possibilitie it might bee, that he might conuey to him the title of the land by his elder brother, if no such warranty had bin made: For it might be that after the death of the father, the elder brother entred into the tenements and dyed without issue, and then the yonger sonne shall conuey

to him the title of his elder brother. But in this case if the yonger son release with a warranty to the disseisor, & dieth without issue, this is a collaterall warranty to the eldest son, because that of such lād as was to the other, the elder brother by no possibility might convey to him the title by meane of the yonger brother.

Also, if the tenant in the taile hath issue three sonnes, and discontinue the taile in fee, and the middle sonne releaseth by his deed to the discontinuee, and bind him and his heirs to warrantize, &c. and after the tenant in the taile die, and the middle dieth without issue, now is the elder sonne barred to haue any recouery by a writ of Formedon, because that the warranty of the middle brother is collateral to him, insomuch that he may by no maner conuey to him by force of the taile, any descent by the middle brother, and therefore it is a collaterall warranty. But if in this case the elder brother die without issue, now the yonger brother may wel haue a Formedon in the discender, & recouer the same land, because that the warranty of the middle brother is lineall to the yonger brother, because it may be, that by possibility the middle brother may be seised by force of the taile after the death of his elder brother, and then the yongest brother may conuey his title of discent by the middle brother, &c.

Also, if the tenant in the tail discontinue the taile, and hath issue & die, and the vncle of the issue releas to the discontinuee with warranty

and

and die without iſſue, this is a collateral warranty to the iſſue in the taile, becauſe that the warrantie deſcendeth vpon the iſſue, which cannot conuey himſelfe to the taile, by meane of his vncle.

Alſo, if the tenant in the taile hath iſſue two daughters and die, and the elder daughter entreth into the whole, & thereof make a feoffement in fee with warranty, and after the elder daughter dieth without iſſue: In this caſe the yonger daughter is barred, as to the moytie, and as to the other halfe ſhe is not barred, for as to the moytie that belongeth to the yonger daughter, ſhe is barred, becauſe that as to the moitie that belõgeth to her, ſhe cannot conuey the diſcent by the means of her elder ſiſter: and therefore as to the moitie, this is collaterall warrãty, but as to the other moity which belongeth to her elder ſiſter, by the ſame elder ſiſter the warrãty is no bar to the yonger ſiſter, becauſe that ſhe may conuey her diſcent as to that moity that belongeth to her elder, by the ſame elder ſiſter: And ſo as to that moity that belongeth to the elder ſiſter, the warranty is to that is lineall to the yonger ſiſter.

And note well, that as to him that demandeth fee ſimple by any of his anceſtors, he ſhall be barred by lineall warrantie which diſcendeth vpon him, except he be reſtrained by ſome ſtatute, but he which demandeth fee taile by a writ of Formedon in the diſcender, ſhall not be barred by lineall warrantie, except hee

haue

haue enough by deſcent in Fee ſimple by the ſame anceſter that made the warranty, but a collateral warranty is a barre to him that demanded fee, and alſo to him that demandeth fee taile, without any other deſcent of fee ſimple, except in caſes that be reſtrained by the ſtatute, and other caſes for certaine cauſes as ſhall be ſaid hereafter.

Alſo, if land be giuen to a man and to his heires of his body begotten, the which taketh a wife, and hath iſſue a ſonne betweene them, and the huſband diſcontinueth the taile in fee, and dieth, and after the wife releaſeth to the diſcontinuee in fee with warrantie, and dieth, and the warranty diſcendeth to the ſonne, this is a collaterall warrantie. But if tenements be giuen to the huſband and the wife, and to the heires of their two bodies begotten, which haue iſſue a ſon, & the huſband diſcontinueth the tayle, and dieth, & after the wife releaſeth with warranty & dieth, this warrantie is but a lineall wartanty to the ſon, for the ſon ſhall not be barred in this caſe to ſue his writ of Formdon, except he haue enough by diſcent in fee ſimple by his mother, becauſe y their iſſue in a writ of Formedon ought to conuey to him the right as heire to his father and to his mother of their two bodies begotten, by forme of the gift. And ſo in ſuch caſe the warrantie of the father, and the warranty of the mother, be but as lineall warranties to the heire, &c. And note wel, & in euery caſe where a man demandeth

deth tenements in fee taile by a writ of Formedon, if any of the issues in the taile that had possession, or that hath possession, make a warranty, &c. if he that sueth the writ of Formedon might by any possibility by matter that might be in deed, convey to him, by him that made the warranty by the forme of the gift: This is a lineall warranty, and not collaterall.

Also, if a man haue issue three sonnes, and he giueth land to the eldest sonne, to haue and to hold to him and to the heires of his bodie begotten, and for default of such issue, the remainder to the middle sonne, to him, and to the heires of his body begotten, and for default of such issue the remainder to the yongest sonne, and to his heires of his body begotten, in this case if the eldest sonne discontinue the taile in Fee, and bind him, and his heires to warrantie, and die without issue, this is a collaterall warranty to the middle sonne, and he shall be barred to demand the same land by force of the remainder, because that the remainder is his title, and his eldest brother is collaterall to the title which beginneth by force of the remainder.

In the same maner it is if the middle sonne had the same land by force of the remainder, because that his eldest brother made no discontinuance, but dyeth without issue of his body, and after the middle sonne maketh a discontinuance with warranty, &c. & dieth without issue, this is a collaterall warranty to the yongest

yongeſt ſonne, and alſo in this caſe if any of the ſaid ſonnes be diſſeiſed, and the father that made the gift releaſe to the diſſeiſor all his right, &c. with warrantie, this is a collaterall warrantie to the ſonne vpon whom the warranty diſcended, Cauſa qua ſupra. And ſo note well, that where a man that is collaterall to the title, &c. releaſeth with warranty, this is a collaterall warranty.

Alſo, if the father giue Land to his elder ſonne, to haue and to hold to him and to his heirs males of his body begotten, the remainder to the ſecond ſonne, &c. if the eldeſt brother alien in fee with warranty, &c. and hath iſſue female & dieth without iſſue male, this is not a collaterall warranty to the ſecond ſonne, nor ſhall not hurt him of his action by Formedon in the remainder, becauſe that the warrantie deſcendeth to the daughter of the eldeſt ſonne, and not to the ſecond ſonne. For euery warranty that diſcendeth, diſcendeth to him that is heire vnto him which made the warrantie by the common Law, &c.

Alſo, if Land be giuen to a man and to his heires males of his body begotten, and for default of ſuch iſſue the remainder therof to his heires females of his body begotten, and after the donee in the taile maketh a feoffement in fee with warranty according, and hath iſſue a ſonne and a daughter and dyeth, this warrantie is but a lineall warrantie to the ſonne, ſo demand by writ of Formedon in the diſcender,

cender. And it is but lineal to the daughter to demand the same land by writ of Formedon in the remainder, if her brother dye without heire male, because that she claimeth as heire female of the body of her father begotten. But in this case, if her brother in this life release to the discontinuee with warrantie, &c. and after die without issue, this is a collaterall warrantie to the daughter, because that shee cannot conuey to her the right that she had by force of the remainder by any meane of discent by her brother, and therefore the brother is collateral to the title of his sister, and therefore his warranty is collaterall, &c.

Also, I haue heard say, that in the time of king Richard the second, there was a Iustice in the common place dwelling in Kent called Rickhill, that had issue diuers sonnes: and his intent was, that his eldest sonne should haue certaine lands to him and to his heires of his bodie begotten, and for default of issue, the remainder to his second sonne, and so forth, and so the third sonne, &c. And because that he would that none of his sonnes should alien or make warrantie for to barre or to hurt the other that should be in the remainder, &c. He caused to be made an Indenture to such effect, that is to say, that the Lands and tenements were giuen to his eldest Sonne vpon this condition, that if the eldest sonne alienes in fee, or in fee taile, &c. or any of his sons alienes, &c. that then their estate should cease & should bee void,

void, and that then the ſaid Lands or Tenements immediatly ſhould remaine to the ſecond ſon, and to the heires of his body begotten, and that vpon the ſame condition, that is to ſay, if the ſecond ſonne alien, &c. that then his eſtate ſhould ceaſe, and that then the ſame lands & tenements ſhould remaine to the third ſonne, and to the heires of his body begotten, &c. the remainder to other of his ſonnes, and liuery of ſeiſin was made according. But it ſeemeth by reaſon that all ſuch remainders in the forme beforeſaid be void, and of no value, and that for three cauſes. One cauſe is, becauſe euery Remainder that beginneth by a deed, it behoueth that the remainder be in him to whō the remainder is tailed by force of the ſame deed when the liuery of ſeiſin is made to him that hath the Franktenement. And ſuch Remainder was not to the ſecond ſonne at the time of Liuerie of Seiſin in caſe before ſaid, &c.

The ſecond cauſe is, if the firſt Sonne alien the tenements in fee, then is the franktenement and the Fee ſimple in the alienee and in none other, and if the donour had any reuerſion, by ſuch alienation the reuerſion is diſcontinued, then how by any reaſon may it bee that ſuch Remainder ſhall begin his beeing and his growing immediatly after ſuch alienation made to a ſtranger, that hath by the ſame alienation Franktenement, and Fee ſimple, and alſo if ſuch remainder ſhould

be

be good, then might he enter vpon the alienee, where he had no maner of right before y alienatiõ, which should be inconuenīēt. The third cause is, when the condition is such, that if the eldest son alien, &c. that his estate shall cease, or shall be void, &c. then after such alienation, &c. may the donor enter by force of such conditiõ, &c. as it seemeth, & so the donor or his heires in such case ought more sooner to haue the land, than the second sonne that hath no right before such alienation, &c. and so it seemeth that such remainders in the case aforesaid be void.

Also, at the common law before the statute of Glouceſter, if the tenant by curteſie had alienedin Fee with warranty according, after his decease this was a bar to the heire, &c. as it appeareth by the words of the same statute: But it is remedied by the same statute, that the warrantie of the Tenant by the curteſie shall be no barre to the heire, except he haue enough by descent by the tenant by the curteſie, for before the said estatute that was a collaterall warrantie to the heire, because hee could not conuey any Title of discent to the tenements by the Tenant by the curteſie, but onely by his mother or other of his ancestors, &c. and that is the cause why it was collateral warrantie. But if a man Inheritor, take a wife, which haue issue a sonne betweene them and the father dieth, and the son entreth into the land, and endoweth his mother, and after his mother alieneth that that she hath in her dower

dower to another in fee, with warranty according, and after dyeth, and the warrantie descendeth to his sonne, now the sonne shall bee barred to demand the same land, because of the said warrantie, because that such collateral warranty of tenant in dower is not remedied by any statute. The same law is where tenant for terme of life maketh an alienation with warranty, &c. and dieth, and the warrantie discendeth to him that had the reuersion, or the remainder, &c. they shall be barred by such warrantie, &c.

Also, in the said case, if it so were that when the Tenant in Dower alieneth, &c. the heire was within age, and also at that time that the warranty descendeth vnto him, he was within age, in this case the heire may after enter vpon the Alienee, notwithstanding the warranty discēdeth, &c. because that no laches shal be adiudged in the heire within age, that he entred not vpon the Alienee in the life of the tenant in Dower, but if the heire was within age at the time of the Alienation, and after he came to full age in the life of the tenant in dower, and so being of full age, he entred not in the life of the tenant in Dower, and after the tenant in dower dieth, there peraduenture the heire shall be barred by such warranty, because it shall be accounted his folly that he being of full age, entred not in the life of the tenant in Dower, &c.

Also, it is spoken in the end of the said Esta-

Estatute of Glouceſter, that ſpeaketh of the alienation with warranty made by the tenant by the curteſie in ſuch foume.

Alſo, in the ſame maner the heire of the woman after the death of his father and mother ſhall not be barred of action, if he demand the heritage or the marriage of his mother by a writ of Entrie that his father aliened in the time of his mother, whereof no fine is leuied in the kings court, &c. And ſo by force of the ſame ſtatute, if the huſband of the wife alien the heritage or mariage of his wife in fee with warranty, &c. by his deed in the Countrey, this is cleere law, that this warranty ſhall not barre the heire, except he haue enough by diſcent, &c. But the doubt is, if that the huſband alien the heritage of his wife by fine leuied in the kings courts with warranty, &c. if this ſhall barre the heire without any diſcent in value, &c. And as to that I will ſay here certaine reaſons that I haue heard ſay in this matter. I heard my Maſter Sir Rich. Newton late chiefe Juſtice of the common place ſay once in the ſame place, that ſuch warranty that the baron maketh by fine leuied in the Kings Court, ſhall bar the heire, though that he haue nothing by deſcent, becauſe the ſtatute ſaith, whereof no fine is leuied in the kings court, &c. And ſo by his opinion, this warranty by fine, &c. abideth yet a collaterall warrantie, as it was at the common law not remedied by the ſaid ſtatute, becauſe that the ſaid Eſtatute excepteth the

alienation by fine with warranty. And some other haue said, & yet say the contrary, & this is their proofe, that as by the same chap of the said estatute is ordained, that the warrantie of the Tenant by the curtesie shall not barre the heire, except he haue enough by discent, &c. though that the Tenant by the curtesie leuy a fine of the same lands with warranty, &c. as strongly as he can, yet this warranty shal not bar the heire, except he haue assets or enough by discent, &c. And I beleeue that this is law, and therefore they say, that it should be inconuenient to vnderstand the statute in such form that a man that hath not but in the right of his wife, may by fine leuied by himselfe of the tenements that he hath but in the right of his wife with warranty, &c. barre the heire of the said tenements without discent of the fee simple, &c. where the tenant by the curtesie cãnot do it. But they haue said, that the statute shall be vnderstood after this forme, that is to say, where the statute speaketh, whereof no fine is leuied in the Kings Court, that is to say, whereof no lawfull fine is rightfully leuied in the same kings court, and that is whereof no fine of the husband and his wife is leuied in the kings court, for at the time of the making of the said Statute, enery estate of Lands or tenements that any man or woman had that should descend to his heire, was Fee simple without condition, or vpon condition in deed or in Law. And because that such fine then

might lawfully haue beene leuied by the husband and his wife, and that if the heirs of the husband warrant, &c. such warranty shall bar the heire, &c.

Also so they say, that this is the vnderstanding of the said statute, for if the husband and the wife made a feoffement in Fee by deed in the countrey, the heire after the decease of the husband & the wife shall haue a writ of Entre sur Cui in vita, &c. notwithstãding the warrãtie of the husband: Then if no such exception was made in the statute of the fine leuied, &c. then the heire should haue the writ of Entre, &c. notwithstãding the fine leuied by the husband and the wife, because that the words of the statute before the exception of the fine leuied, &c. be generall, &c. that is to say, that the heire of the woman after the death of the husband & the wife, shall not be barred of action, if he demand the heritage or the marriage of his mother by a writ of Entre, that his father alened in the time of his mother, & so it should be in that case of the statute, except such words were, that is to say, whereof no fine is leuied in the Kings Court: and so they say, that this is to be vnderstood, whereof no fine by the husband & the wife is leuied in the kings court, the which is lawfully leuied in such case: For if the Justices haue knowledge ỹ a man that hath nothing but in the right of his wife, will leuy a fine in his name onely, they will not, nor ought not to take such fine to be leuied by the

husband only, without naming the wife, therfore inquire of this matter.

Also, it is to wit, that in such words where the heire demandeth the heritage or marriage of his mother, this word (Or) is a disiunctiue, and is as much to say, if the heire demand the heritage of his mother, that is to be vnderstood, the tenements that his mother had in fee simple by discent, or by purchase, or if the heire demand the marriage of his mother, that is to say, the tenements that were giuen vnto his mother in frankmariage.

Also, where it is mooued in diuers deeds these words in Latin, Ego & hærrd' mei, &c. warrantizabimus, & imperpetuũ defendemus, it is to see what effect hath that word Defendemus in such deeds: & it seemeth that it hath not the effect of warrantize, nor comprehendeth any clause of warrantize, for if it should be so that it taketh effect, or cause of warrantize, then it should be put in some fines leuied in the kings court. And a man neuer saw that this word Defendemus was in a fine, but only this word Warrantizabimus, by which it seemeth, that this verbe Warrantizo maketh warranty, and is the cause of warrantize, and none other word in our Law.

Also, if tenant in the taile be seised of tenements deuisable by Testament after the custome, &c. and the tenant in the taile alieneth the tenements to his brother in fee, and hath issue and dieth, and after his brother deuiseth

by

by his testamēt the same tenemēts to another in fee, and bindeth him & his heires to warrātize, &c. and dieth without issue, it seemeth that this warranty shall not barre the issue in the taile, if he will sue his writ of Formedon, because that the warranty descended not to the issue in the taile, insomuch as the vncle of the issue was not boūd by force of the same warranty in his life: And the cause that he could not warrant the land in his life is, insomuch that the deuise could not take any execution or effect but after his decease, & insomuch that the vncle in his life was not held to warrāty, such warrantize may not discend from him to the issue in the taile, &c. for nothing may discēd from the auncestor to his heire, but the same that was in the ancestour. Also a warrantie may not go after the nature of tenements by custome, but only after the forme of the cōmon law. For if tenāt in taile be seised of tenemēts in borough English, where the custom is, that all tenements of the same Borough, ought to discend to the yongest son, and he discontinueth the taile with warranty, &c. and hath issue 2 sons & dieth seised of other lands & tenemēts in the same borough in fee simple to the value and more of the tenements tailed, &c. yet the yongest sonne shall haue a Formdon of the tenements tailed, and shall not be barred by the warrantize of his father, though enough to him descended in fee simple from the same father after the custome, for this that the war-

rantize discendeth vpon the elder brother that is in full life, &c. and not vpon the yongest son. In the same maner it is of collateral warrãtize made of such tenemẽts where the warrãtize discendeth to the elder son, &c. this shal not bar the yonger son, &c In the same maner it is of tenements in the Shire of Kent, which is called Gauelkind, the which tenements be departible among the brethren, &c. after the custome, &c. if any such warranty be made by their ancestors, such warranty descendeth all onely to the heire that is heire by the common law, and not to all the heires which are heirs of such tenements after the custome, &c.

Also, if Tenant in the taile haue issue two daughters by diuers venters, and dyeth, and the daughters enter, and a stranger disseiseth them of the same Tenements, and one of the daughters releaseth by her deed to the disseisor all her right, and bindeth her and her heires to warrantize, and dieth without issue, in this case the sister that suruiueth may well enter, & put out the disseisor of all the tenements, for this that such warrantize is no discontinuance, nor collateral all warrantize to the sister that suruiueth, for this that they bee of halfe blood, and the one may not be heire to the other after the common Law. But otherwise it is where there be daughters of tenants in the taile by one venter.

Also, if tenant in the taile let tenements to another for terme of life, the remainder to an

other

other in fee, and the collaterall ancestor confirmeth the estate of the tenant for terme of life, and bindeth him and his heires to warrantize for terme of life of the tenant for terme of life & dieth, and the tenant in the taile hath issue & dyeth, now this issue is barred to aske the tenemẽts by writ of Formdon during the life of the tenant for terme of life, because of the collaterall discent vpon the issue in the tayle. But after the decease of the tenant for terme of life, the issue shall haue a Formedon, &c. And vpon this I haue heard a reason, that this case shall proue another case: that is to say, If a man let his land to another, to haue & to hold vnto him & to his heirs for terme of anothers life, and the lessour dyeth, liuing him to whose life, &c. and a stranger entreth into the land, that the heire of the lessee may put him out, for this that in the case next aforesaid, in so much that a man may bind him and his heires to warrant to the tenant for terme of life, all onely during the life of the tenant for terme of life, and the warrantize discendeth to the heire of him that made the warrantize, the which warrantize is no warrantize of inheritance, but all only for terme of anothers life. By the same reason where tenements bee let to a man, to haue and to hold to him and to his heires for terme of anothers life, if the father die, liuing him to whose life, &c. his heire shall haue the tenements liuing him to whose life, &c. For they haue said, that if a man grant

an annuity to another, to haue & to take to him and to his heires for terme of anothers life, if the grauntee die, &c. that after his heire shall haue the annuitie during the life of him to whose life, &c. Quære de ista materia, &c

But where such a lease or grant is made to a man and his heires for terme of yeares, in this case the heire of the lessee & the graunter shall neuer haue after the death of the lessee or the grauntee that that is so letten or granted, for this that it is a chattell reall, and all chattels reals by the common law, shal come to the executors of the grantee, or the lessee, and not to the heire, &c.

Also, in some cases it may be, that howbeit that a collateral warrantize be made in fee, &c. yet such warrantize may be defeated and aniented. As the tenant in the taile discontinueth the taile in fee, & the discontinuee is disseised, & the brother of the tenant in the taile releaseth by his deed to the disseisor al his right, &c. with watrantize in fee, and dieth without issue, and the tenant in the taile hath issue & dieth, now the issue is barred of his action by force of the collaterall warrantie descending vpon him: but if after this the discontinuee enter vpō the disseisor, then may the heire in the taile haue his Action of Formedon, &c. for this that the warrantie is aniented & defeated. For when the warrantize is made vnto a man vpon any estate that then he had, if the estate be defeated, the warrantie is defeated.

In

In the same maner it is if the discontinuee make a feoffement in fee, reseruing to him certain rent, & for default of paiment a reentry, &c. and a collateral ancester releaseth to the feoffee that hath estate vpon condition, &c. and dieth without issue, though that the warrantie descended vpon the issue in the taile, yet if after the rent be behind, & the discontinuee entreth into the land, &c. then the issue in the taile shall haue his recouery by a writ of Formedon, for this that the warranty collateral is defeated. And so if any such collaterall warranty bee pleaded against the issue in the taile in his action of Formdon, he may shew the matter as is aforesaid, how the warranty is defeated, and so he may well maintaine his action.

Also, if a tenant in the taile make a feffemēt to his vncle, & after his vncle maketh a feoffemēt in fee with warrantize, &c. to another, and after the feffee of the vncle enfeffeth againe the vncle in fee, & after ỹ vncle enfeffeth a stranger in fee without warrantize, and dieth without issue, & the tenant in the taile will bring his writ of Formdon against the strāger that was the last feoffee, & that by the vncle, in this case the issue shal neuer be barred by the warranty ỹ was made by the vncle to the said first feffee of his vncle, for this that the said warrantize was defeated & anienied, for this that ỹ vncle tooke againe to him as great estate of his said first iessee to whō the warrantize was made, as the same feoffee had of him: And the cause

why

Why the warranty is aniented in this case, is this, that is to say, that if the warrãtize were in his force, then the vncle shall warrant a fee simple vnto himselfe, that may not be, but if the feffee made estate to the vncle for terme of life, or in fee taile, sauing the reuersion vnto him, &c. Or that he made a gift in the taile to the vncle, or a lease for terme of life, the remainder ouer, &c. In this the warrantize is not all vterly aniented, but it is put in suspence during the estate that the vncle had, for after this that the vncle is dead without issue, then he in the reuersion, or he in the remainder shall bar the issue in the tail of his writ of Formdon by the collaterall warrantize in such case, &c. But otherwise it is where the vncle had as great estate in the land by the feffee to whõ the warrantize was made as the feffee had of him, &c.

Also, if the vncle after such feoffement made with warrantize, or a release made by him with warrantize be attaint of felony, or outlawed of felony such collateral warranty shal not bar nor grieue the issue in the taile, for this that by the attainder of felony, the blood is corrupt betweene them, &c.

Also, if tenant in the taile be disseised, & after maketh a release to the disseisor with warrantize in fee, and after the tenant in the taile is attaint or outlawed of felony, and hath issue & dieth, in this case the issue in the taile may enter vpon the disseisor: And the cause is for this, that nothing maketh discontinuance in this

this case but the warranty, and the warranty may not descend to the issue in the tail, for this that the bloud is corrupt betweene him that made the warrantize and the issue in the taile, for the warrantize alway abideth at the common law, & the cõmon law is such, that when a man is outlawed, or attaint of felony, which outlawry is an attainder in the law, that the blood betweene him and his son, and all other which should be said his heires is corrupt, so that nothing by descent may descend to any that may be his heire by the cõmon law: And the wife of such a man that is so attaint shall neuer be indowed in the tenemẽts of her husband so attaint, &c. And the cause is, because men should more eschew to do felony, &c. But the issue in the taile, as to the tenements tailed is not in such case barred, because he is inheritable by force of the statute, & not by the course of the cõmon law. And therefore such attainder of his father, or his ancestor in the taile, &c. shal not put him out of his right, that he should haue by force of the taile.

Also, if tenant in the taile enfeoffe his vncle, which infeoffeth another with warranty, &c. if after the feoffee by his deed release to the vncle all maner of warranties, or all maner of couenants reals, or all manner of demands, by such release the warranty is extinct. And if the warrantie in such case be pleaded against the heire in the taile that bringeth his writ of Formedon, to barre the heire of

his

his action, if the heire haue and plead the said release, &c. he shall defeat the plee in barre, &c. and many other causes and matters there bee whereby he may defeat warranties.

And it is to wit, that in the same maner as collateral warranty may be defeated by matter in deed, or in law, in the same manner may lineall warranty be defeated, &c. For if the heire in the taile bring a writ of Formedon, and a lineall warrantie of his ancestor inheritable by force of the taile be pleaded against him with that the assets be to him discended of fee simple by the same ancestor that made the warranty, if the heire that is demandant may adnull and defeat the warrantie, this sufficeth to him: for the discent of other tenements of fee simple maketh nothing to barre the heire without the warrantie, &c.

FINIS.

Here beginneth the Table of *this present booke.*

NOw I haue made for thee my Sonne three Bookes. The first is of Estates that men haue of lands or tenements, that is to say,

Of Tenant in Fee simple. —— 2
Tenant in Fee taile. —— 4 1/2
Tenant in the Taile after possibility of issue extinct. —— 7 1/2
Tenant by the Curtesie of England. — 8
Tenant in Dower. —— 9 1/2
Tenant for terme of life. —— 12
Tenant for terme of yeares. —— 12 1/2
Tenant at will by the Common Law. —— 14 1/2
Tenant at will by the custome of the manor. —
i.e. By copy of Court Roll —— 15 1/2

The second Booke.

The second Booke is, of Homage. —— 18 1/2
Fealtie. —— 19 1/2
Escuage. —— 20
Knights service. —— 22
Socage. —— 25 1/2
Frankalmoigne, or Free almes. —— 29
Homage auncestrell. —— 31 1/2
Graund Serieantie. —— 33 1/2
Petie Serieanty. —— 34 1/2
Tenure in Burgage. —— 35
Tenure in Villenage. —— 37
Of three manner of Rents, that is to say,
Rent service. —— Rent

Rent charge, and
Rent seeke.

And these two small Bookes haue I made for thee, for to vnderstand better certain chapters of the ancient bookes of Tenures.

The third Booke.

The third Booke is, of Parceners.
Of Jointenants.
Tenants in common.
Estates of lands or tenements vpon Condition.
Descents that take away Entries.
Continuall claime.
Releases.
Confirmations.
Attournements.
Remitters.
Of warranties, that is to say:
Warrantie lineall.
Warrantie collaterall, and
Warrantie that beginneth by disseisin.

And know thou my sonne, that I will not that thou beleeue, that all that I haue said in the said Bookes is Law, for that will I not take vpō me nor presume: but of those things that be not law, inquire and learne of my wise Masters learned in the Law.

Notwithstanding, though that certaine things that be noted and specified in the said

Bookes

Bookes bee not Law, yet such things shall make thee more apt and able to vnderstand, and learne the Arguments and the reasons of the Law: For by the arguments and the reasons in the Law, a man may more sooner come to the certaintie, and to the knowledge of the Law.

Lex plus laudatur, quando ratione probatur.

FINIS.